

## **TITLE I--TRANSPORTATION INFRASTRUCTURE INITIATIVES**

### **Subtitle A--Increasing Efficiency in Project Delivery**

#### **SEC. 1001. IMPROVING STATE AND FEDERAL AGENCY ENGAGEMENT IN ENVIRONMENTAL REVIEWS.**

Authority currently exists for Federal-aid recipients to use Federal dollars to fund positions at Federal, State or local agencies that participate in the environmental review process under 23 U.S.C. 139. Funds can be used to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval and consultation processes for the project, projects, or programs. This section would create similar authority in title 49 to apply across the U.S. Department of Transportation (Department, DOT, or USDOT) allowing recipients of grants from any operating administration to use a portion of their Federal dollars to support such agreements.

#### **SEC. 1002. ENVIRONMENTAL REVIEW ALIGNMENT AND REFORM.**

Subsection (a) of this section would direct the Department of Transportation, in coordination with the Steering Committee described in section 1009, to develop a coordinated and concurrent environmental review and permitting process for transportation projects initiating an Environmental Impact Statement under NEPA. The process would ensure that the Department and agencies of jurisdiction have sufficient information to develop a statement of purpose and need and a range of alternatives. It would also provide for concurrence on the purpose and need and range of alternatives such that those determinations will be used in all concurrent reviews unless there is conflict with an agency's statutory responsibilities. Should circumstances arise that require reconsideration of either purpose and need or range of alternatives, the Department and agencies of jurisdiction would concur on any changes.

Subsection (b) would require the Department, in coordination with agencies of jurisdiction, to develop an environmental checklist to help identify resources potentially impacted by a proposed project and the agencies of jurisdiction that should serve as cooperating agencies under NEPA.

Subsection (c) would direct the Secretary of Transportation to convene annual meetings at the appropriate jurisdictional level to support coordination on project priorities, workforce planning, and sharing of best practices, and to encourage greater engagement and coordinated planning with additional stakeholders.

Subsection (d) would require the Department to coordinate with the Steering Committee to develop a system to measure and report on the success of aligning Federal reviews as described in this section.

**SEC. 1003. IMPROVING COLLABORATION FOR ACCELERATED DECISION MAKING.**

Section 1306 of MAP-21 created financial penalties for agencies with jurisdiction if they fail to render a decision within 180-days of either the issuance of a Record of Decision or a Finding of No Significant Impact or their receipt of a complete application, whichever occurs last. This section would amend that requirement by tying the financial penalties to an agreed upon schedule such as that described in section 1309 of MAP-21. Instead of financial penalties accruing on the 181<sup>st</sup> day, the financial penalties would be assessed only if a decision was not reached within 30 days of the target date identified in an agreed upon schedule. However, if no schedule exists, the existing 180-day deadline would still apply.

**SEC. 1004. UNREASONABLE OBSTRUCTION OF NAVIGATION DETERMINATION.**

This section would amend both the Bridge Act of 1906 and the General Bridge Act of 1946, which require the Secretary of Homeland Security to make a determination whether a proposed bridge structure will unreasonably obstruct the free flow of navigation within the waterway over which it is constructed. This section would clarify that the Secretary should consider "the necessities of rail, aviation, transit and highway traffic" as well as "the construction, maintenance and operation costs of the proposed bridge" when making the determination

**SEC. 1005. SATISFACTION OF REQUIREMENTS FOR CERTAIN HISTORIC SITES.**

Aligning the Section 4(f) and 106 processes is essential to achieving efficiency in reviews for historic sites while continuing to provide important protection for cultural resources including mitigating potential impacts. This section would direct the Department, in coordination with DOI and ACHP, to develop procedures to align the reviews within 90 days of enactment. It also provides an optional review path under which an early determination could be made that no avoidance alternative exists and with concurrence from DOI, the SHPO or THPO and ACHP (affected agencies) if involved that determination would eliminate any further requirements for analysis or justification. Such determinations and concurrence or non-concurrence will be posted on an appropriate Federal website within three days. If no further avoidance analysis is required, the Secretary may then notify the affected agencies that analysis under 106 will satisfy 4(f) and provide the affected agencies an opportunity to review and approve the use of the 106 document to satisfy the remaining conditions of 4(f). The availability of this optional review process would not preclude DOT from using existing procedures for 4(f) and 106 reviews.

**SEC. 1006. RAIL AND TRANSIT EXEMPTION FROM CONSIDERATION UNDER SECTION 4(f).**

This section would amend Titles 23 and 49 to exempt from section 4(f) analysis the improvement to, maintenance, rehabilitation, or operation of railroad or rail transit lines or elements thereof, with the exception of stations when those railroad or rail transit lines are in-use or were historically used for transportation of goods or passengers. The consultation requirements of section 106 of the National Historic Preservation Act, would still apply. This section would eliminate the need to demonstrate there is "no feasible or prudent alternative" to using a rail corridor prior to approving a project to improve, maintain, rehabilitate, or operate rail on the corridor.

#### **SEC. 1007. MULTIMODAL CATEGORICAL EXCLUSIONS.**

This section would modify 49 U.S.C. 304 (MAP-21 section 1314), by modifying the definition of multimodal project to expand its applicability to all DOT actions rather than only those funded under title 23 or chapter 53 of title 49; modifying the "Exercise of authorities" paragraph to make the section applicable to all Departmental multimodal projects; removing the requirement for a single grant agreement; clarifying the roles and responsibilities for applying a cooperating authority's categorical exclusion; and modifying the "modal cooperation" paragraph to provide for technical assistance from the cooperating authority at the request of the lead authority.

#### **SEC. 1008. INCREASING TRANSPARENCY IN ENVIRONMENTAL REVIEWS.**

This section would create a new section 311 of title 49 that directs the Secretary to establish an online reporting system to make publicly available information related to progress and status of environmental reviews and permitting on projects requiring either an environmental impact statement or an environmental assessment. This reporting system would be required to be operational within 2 years of enactment and would provide for reporting not only from the operating administrations on the NEPA action but also from resource and regulatory agencies who have review or decision-making responsibilities related to the projects.

#### **SEC. 1009. INFRASTRUCTURE PERMITTING IMPROVEMENT CENTER.**

This section would establish the Infrastructure Permitting Improvement Center, which would be administratively housed at DOT. The Center is intended to support the President's goal of reducing project delivery timelines and improving outcomes for communities and the environment. The Administration's Infrastructure Steering Committee developed an Implementation Plan that detailed specific actions for agencies to take to continue progress towards this goal. One of the recommendations within the Implementation Plan was the establishment of the Interagency Infrastructure Permitting Improvement Center. The Center would coordinate implementation of priority reform actions for Federal agency permitting, support modernization efforts and interagency pilots, provide technical assistance and training to federal staff, identify, develop and

track metrics for timeliness and project outcomes, and administer the use of online transparency tools. The Center also would report to the President on progress.

#### **SEC. 1010. CLARIFICATION OF TRANSPORTATION ENVIRONMENTAL AUTHORITIES.**

Subsections (a) and (b) of this section would support the wide-spread practice of referring to two provisions of transportation law (49 U.S.C. 303 and 23 U.S.C. 138) by a reference to section 4(f) of the 1966 Department of Transportation Act, which was repealed long ago. This subsection would amend sections 303 and 138 to include a reference to clarify that these sections may also be referred to as "Section 4(f)" within the transportation law community.

Subsection (c) would clarify that section 1319 of MAP-21 applies only to major Federal actions by the U.S. Department of Transportation and not more broadly to actions by other government agencies subject to NEPA.

#### **SEC. 1011. ADVANCE ACQUISITION.**

This section would allow the Secretary to assist a recipient of funding in acquiring right-of-way and adjacent real property interests before or during the completion of the environmental reviews for any project receiving funding under subtitle V of title 49, United States Code, that may use such property interests if the acquisition is otherwise permitted under Federal law and the recipient certifies, with concurrence of the Secretary, that certain conditions are met. The section further provides that, before authorizing Federal funding for such an acquisition, the Secretary shall complete the review process under NEPA with respect to the acquisition, and that a real property interest acquired under this section may not be developed in anticipation of the proposed project until all required environmental reviews for the project have been completed.

#### **SEC. 1012. BRIDGE EXEMPTION FROM CONSIDERATION UNDER SECTION 4(f).**

This section would address treatment under section 4(f) of a category of ordinary concrete and steel bridges constructed after 1945. Through its Program Comment for Common Post-1945 Concrete and Steel Bridges (77 Fed. Reg. 68790), the Advisory Council on Historic Preservation relieved Federal agencies from the requirement under section 106 of the National Historic Preservation Act to consider individually the effects of undertakings on certain common bridges and culverts constructed of steel or concrete after 1945. The Program Comment is limited to common concrete and steel bridges and culverts that lack distinction, are not previously listed (or determined eligible for listing) on the National Register of Historic Places, and are not located in or adjacent to historic districts. The Program Comment eliminates case-by-case review under section 106 only for those bridges and culverts meeting these criteria. However, the bridges and culverts

that are excluded from the Program Comment are still subject to assessment and consideration under section 4(f).

The added subsection would, in each case, remove the administrative steps of assessment and consideration under section 4(f) for those common post-1945 concrete and steel bridges and culverts that have been determined exempt from individual review under the National Historic Preservation Act.

## Subtitle B--Freight Policy and Financing

### **SEC. 1101. MULTIMODAL FREIGHT INVESTMENT PROGRAM.**

Subsection (a) would create a tiered Multimodal Freight Incentive Program for States, the District of Columbia, and Puerto Rico to fund freight projects. States would receive a distribution as they achieve certain specified requirements. For Tier I incentive grants, States must establish a freight advisory council and create a State freight plan, among other requirements. For Tier II incentive grants, States must cooperate with neighboring States to analyze freight needs and commit to spend the incentive funds on the highest priority projects on the freight plan, among other requirements. Any unused funding from this section would be reallocated to the National Freight Infrastructure program.

Subsection (b) would create a new discretionary grant National Freight Infrastructure program to support freight-related infrastructure investments in all freight-carrying modes, both surface and air. The program would define eligible applicants as any public transportation authority, including States, D.C. and Puerto Rico, and specified territories; local and tribal governments; MPOs and public transportation authorities (e.g., bridge, turnpike, and port authorities); and groups of such authorities. Eligible projects would include capital infrastructure projects, operational improvements or equipment in the highway, rail, water, air, and pipeline modes, as well as intermodal facilities and facilities related to border crossings. Selection criteria for the discretionary program would include the effect of the project on achieving the MAP-21 freight goals; the use of innovative technologies, strategies, and practices; the impact on U.S. exports; the degree of leveraging of local funds; the project's likely net benefits; and the extent to which funds for the proposed project are unavailable from other funding sources. The Secretary would be directed to achieve a reasonable degree of geographical, urban/rural, and modal balance in granting awards. The Secretary would be required to select only projects for which the non-Federal match is committed, and is to base funding decisions only on the benefits of the project itself (for which funding has been committed), not on the benefits of some larger project for which funding has not yet been committed.

Subsection (c) (State Freight Advisory Committees) would codify and revise a similar MAP-21 provision. First, the proposal would require States that receive grants under the new chapter to establish State freight advisory committees. Under current law, States are encouraged, but not required to have such committees. The proposal would expand the list of representatives to include airports and metropolitan planning organizations. This subsection also would add a requirement that the Committees approve the States'

freight investment plan, which States would be required to have as part of their State freight plan.

Subsection (d) (State Freight Plans) would codify and revise a similar MAP-21 provision. The proposal would require States to have a State freight plan. Under current law, States are encouraged, but not required to have such plans. The proposal would add to the required contents of the plan to include a freight investment plan that includes a list of projects in order of priority and describes how multimodal freight investment grant funds under section 5401 of this title would be invested and matched. Under the proposal, States would be required to update the freight plan at least every 5 years and have a 10-year planning horizon. States would have the option of updating the freight investment plan more frequently than the overall State freight plan.

Subsection (e) (National Freight Policy, Network, Plan, and Data) would move and revise the provision currently located in section 167 of title 23, United States Code. Under current law, the focus of the national freight policy, network, plan, and data is highway focused. This provision would make the policy, network, plan, and data multimodal focused. This provision would streamline what is in existing law by eliminating the primary freight network and critical rural freight corridors. Under the proposed language, the Secretary would have additional flexibility in designating the national freight network. In carrying out this provision, the Secretary will consult with the Secretaries of Homeland Security and Commerce and the head of the Army Corps of Engineers as well as the heads of other involved agencies on matters concerning the security of freight transportation.

Subsection (f) would make a conforming amendment and would repeal sections 1116 (Prioritization of Projects to Improve Freight Movement), 1117 (State Freight Advisory Committees), and 1118 (State Freight Plans) of MAP-21. Section 1116 would be replaced by the Multimodal Freight Incentive Program (as proposed in subsection (a)), and sections 1117 and 1118 would be codified in proposed section 5403 and 5404 of title 49, United States Code. This subsection would also repeal section 167 of title 23, United State Code is repealed since the provisions are being codified in section 5405 of title 49.

## **SEC. 1102. REDESIGNATION OF THE NATIONAL NETWORK.**

This section would amend sections 31111, 31112, 31113, and 31114 of title 49, United States Code, to replace the existing National Network (NN) designation with the enhanced National Highway System (NHS) and the National Freight Network (NFN). The NN was originally established in 1982 by regulation to protect interstate commerce by prohibiting restrictions on trucks of certain dimensions on a national network of roads. Since that time, the nation's demographics, industrial capacity, intermodal distribution patterns, and international trade have shifted.

The enhanced NHS includes roadways important to the nation's economy, defense, and mobility. The NFN assists States in strategically directing resources toward improved

system performance for efficient goods movement on highways significant to freight. The redesignated NN would be composed of all NHS and NFN routes and would provide for a more rational, comprehensive network of routes and promote the efficient flow of interstate commerce. The Federal Highway Administration would undertake a rulemaking to update the process for identification of the NN, reasonable access to the NN, and requests for additions, deletions, exceptions and restrictions of NN routes. The rulemaking also would review whether to retain the term “National Network.”

This provision would not result in adjustments to the current length and width limitations found in 49 U.S.C. 31111 and 31113, or the Longer Combination Vehicle freeze enacted by the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. 31112).

In order to allow States sufficient time to transition to the redesignated network, the Secretary would be prohibited from enforcing the amendments made by this section until three years after the effective date of this Act.

#### Subtitle C--Planning

#### **SEC. 1201. TRANSPORTATION SYSTEM RESILIENCE ASSESSMENT.**

This section would make infrastructure vulnerability and resilience assessment a focus area in the transportation planning process by requiring that a resilience assessment be a component of State DOT’s and MPOs long-range plans.

This section would create better stewardship of the investment in our highway system by improved planning for the risks that extreme weather events and future climate change pose. It will ensure that all States and MPOs identify these risks and address them in their long range plans. It will also increase the predictability of asset management cycles by reducing unplanned asset degradation from extreme events. As a result, future highway and transit projects, operations, and systems will be more resilient to extreme events and better suited for future climate changes.

#### **SEC. 1202. CONSOLIDATED AND HIGH PERFORMING METROPOLITAN PLANNING ORGANIZATIONS.**

This section would prevent new MPOs from being designated within metropolitan statistical areas already served by an existing MPO in order to improve coordination and consistent planning, and would require coordinated planning and performance target setting in areas where multiple MPOs are already designated within a single Metropolitan Statistical Area.

This section would also authorize the Secretary to create a high-performance tier of MPOs, and would grant certain benefits to the MPOs that qualify for the high-performance designation. The high-performing designation would be granted by DOT on the basis of criteria including whether the MPO has an equitable and performance-based

approach to decision-making and, if necessary, whether it has consolidated with or practices coordinated planning with other MPOs within its MSA. Designation as a high-performing MPO would qualify the MPO for suballocation of additional funds, including Surface Transportation Program incentive funds, Transportation Alternatives Program incentive funds, and Metropolitan Mobility funds, which are part of the FAST Program in addition to priority consideration within Metropolitan Planning Funds. High-performing MPOs would receive a 50% increase in STP and TAP funds. In addition, obligation authority suballocated to all MPOs would be made available on an annual basis but would remain available for a four-year period.

### **SEC. 1203. PARTICIPATION OF PUBLIC PORT AUTHORITIES.**

This section would formally include public ports in the Metropolitan Transportation Planning and Statewide Transportation planning processes, in order to ensure that port plans reflect and are reflected in MPO and Statewide transportation programs. First and last mile linkages between ports and the landside transportation system directly impact port capacity and efficiency, and depending on how those roads and rail lines are designed, nearby communities as well. Incorporating ports into local transportation plans can maximize port efficiency while minimizing community impacts.

### **SEC. 1204. STRENGTHENING THE STATEWIDE AND NONMETROPOLITAN PLANNING PROCESS.**

This section would require State financial plans and system performance reports; both items are currently optional for States. This section would also add a certification process comparable to the MPO Certification Process. The certification provision would provide a process to ensure that States have met the requirements of 23 U.S.C. 135, as well as other Federal laws, regulations, and orders applicable to the statewide and nonmetropolitan and the metropolitan planning processes.

This section would strengthen the statewide and nonmetropolitan transportation planning process and increase its comparability to the metropolitan planning process. This is especially important in light of the MAP-21 transition to a performance-based, outcome-driven statewide planning process where investment decisions are tied to performance outcomes, and MPO coordination is required.

### **SEC. 1205. REMOVAL OF THE CONGESTION MANAGEMENT PROCESS.**

Currently, MPOs serving areas over 200,000 people are required to undertake a Congestion Management Process. Congestion management is the application of strategies to improve reliability and reduce congestion in the transportation system. Because congestion reduction is one of the national performance goals, it is duplicative to require additional planning focused solely on this element. This section would remove this duplicative requirement.

### **SEC. 1206. PUBLIC INVOLVEMENT IN PLAN DEVELOPMENT.**



This section would strengthen public involvement in transportation planning during the development and implementation of the transportation plan. It also affirms the importance of public involvement during the optional scenario planning efforts.

**SEC. 1207. CONNECTION TO OPPORTUNITIES NATIONAL GOAL AND POTENTIAL PERFORMANCE MEASURE.**

This section would establish a new national goal of achieving a transportation system which connects people to economic opportunities, with an emphasis on improving the ability of disadvantaged residents to reach jobs, schools, and other opportunities. It would provide the Secretary with the option of developing a connectivity performance measure, under a framework outlined in section 1209. It also would provide the Secretary with the option of developing a multimodal freight performance measure in accordance with the National Freight Strategic Plan.

**SEC. 1208. WORKFORCE DEVELOPMENT.**

Under current law, the Secretary, in cooperation with the Secretary of Labor and any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer surface transportation and technology training, including skill improvement programs, and to develop and fund summer transportation institutes. This proposal would continue and enhance the current program. Under this proposal, State DOTs participating in this program would be required to develop a workforce plan that identifies immediate and anticipated demographic and workforce gaps, establish a "workforce development compact" with the State workforce investment board, among other agencies that have training and education programs, and measure program outcomes.

This section also would establish a Jobs-Driven Skills Training incentive, which would provide funding for States to develop comprehensive workforce development programs including transportation technology and skills training, apprenticeship, and skill improvement programs leading to career pathways for disadvantaged populations. To be eligible for funding under this program, a State would obligate in that fiscal year funding from funds apportioned to the State under NHPP and/or STP. These funds would be matched by DOT up to two to one basis. Up to 20 states would also be eligible to receive incentive funding in support of its existing On-Job-Training/Supportive Services (OJT/SS) program without the obligation of STP or NHPP funds, if the State demonstrates that it operates the OJT/SS program in partnership with an institution or agency that has established skills training, recruitment, and placement resources and has demonstrated success in job placement.

**SEC. 1209. MEASURING TRANSPORTATION CONNECTIVITY PILOT ACTIVITIES.**

This program would provide funding to large MPOs to identify and implement approaches to improving their residents' ability to connect to opportunities through the transportation network, and directs the USDOT to conduct a Connection to Opportunities Pilot Study and determine the need for a National Connectivity Performance Measure. Up to ten Metropolitan Planning Organizations would be funded to conduct inventories of the degree of connectivity provided through automobiles, public transportation and non-motorized modes, and then to develop or deploy pilot measure(s) and targets that would aim to improve connectivity for all residents, with a special emphasis on improving and increasing connections for disadvantaged Americans and neighborhoods with limited transportation options. MPOs selected would be designed as mentor pilots and novice pilots, depending on their existing capacity in advanced data-intensive planning frameworks. The USDOT would manage knowledge-sharing and peer exchanges among grant recipients, and conduct a Connection to Opportunities Final Report which would include recommendations on establishing a national Connectivity performance measure. Under this proposal, the Secretary would have the discretion to promulgate a rule establishing such a measure.

#### **SEC. 1210. PERFORMANCE-BASED PROJECT SELECTION.**

This proposal would ensure that national goals and performance measures inform investment decisions by States and Metropolitan Planning Organizations. The proposal would require that the TIP project selection process uses transparent performance-based funding principles. Project selection would occur through clear rankings of proposed projects according to their ability to help achieve performance targets or to their inclusion of elements that are known to support outcomes that will help achieve these targets.

#### **SEC. 1211. STORMWATER PLANNING.**

This section would amend the statewide and metropolitan transportation planning processes, to require States and MPOs to consider whether a proposed project would reduce stormwater impacts.

### Subtitle D--Congestion Mitigation and Air Quality Improvement

#### **SEC. 1301. ELIGIBLE PROJECTS.**

Projects that contribute to attainment or maintenance of national ambient air quality standards are eligible for CMAQ funds in areas that do not meet or previously did not meet air quality standards (nonattainment and maintenance areas). This section would amend 23 U.S.C. 149 (b) to clarify that a State may obligate CMAQ funds in nonattainment or maintenance areas for a transportation project or program that would likely contribute to the area's attainment or maintenance of a national ambient air quality standard.

#### **SEC. 1302. SPECIAL RULES.**

This section would amend 23 U.S.C. 126 to specify that a State could transfer no more than 25 percent of its congestion mitigation and air quality improvement program apportionment to another program under 23 U.S.C. 104(b), with a few specified exceptions. This section would also amend 23 U.S.C. 149, which provides that a State may obligate CMAQ funds for transportation activities for an area that is nonattainment for PM-10, to clarify that transportation activities within PM-10 maintenance areas are also eligible for CMAQ funds.

#### **SEC. 1303. PRIORITY CONSIDERATION.**

23 U.S.C. 149 (g)(3) calls for the State and MPOs to consider funding priority for projects that provide PM-2.5 emissions reduction benefits in PM-2.5 nonattainment and maintenance areas. Amendments are proposed to clarify that priority would be given to projects likely to reduce PM-2.5 and add a new subparagraph (B) that would clarify that such priority consideration should also apply to projects that would reduce ozone precursor emissions in ozone nonattainment or maintenance areas.

#### **SEC. 1304. EVALUATION AND ASSESSMENT OF PROJECTS.**

23 U.S.C. 149 (i) provides that the Secretary shall maintain and disseminate a database on projects and their impacts. This section would clarify that the database would include information on reducing emissions that would likely to contribute to the attainment or maintenance of air quality standards.

#### **SEC. 1305. ELECTRIC VEHICLE CHARGING STATIONS AND COMMERCIAL MOTOR VEHICLE ANTI-IDLING FACILITIES IN REST AREAS.**

This amendment to section 111, of title 23, United States Code, would allow States to permit electric vehicle charging stations and anti-idling facilities for commercial motor vehicles in rest areas along a highway on the Interstate System in the State, if such stations or facilities would not impair the highway or interfere with the free and safe flow of traffic thereon. A State would be able to charge a fee for using such stations and facilities notwithstanding the prohibition of commercial establishments on Interstates in section 111(a). A State could only use revenues received from such fees for projects eligible under title 23, United States Code.

Subsection (b) would make conforming amendments to the CMAQ program and Jason's Law to remove language that prohibits such facilities.

Subtitle E--Innovative Finance and Tolling

#### **SEC. 1401. 21ST CENTURY INFRASTRUCTURE INVESTMENTS.**

This section would establish two new discretionary grant programs in title 49, U.S. Code, to be administered by the Secretary of Transportation. One of the programs is modeled closely on the

highly successful "TIGER" grants program created by Congress in 2009. A new Chapter 56 of title 49 would consist of the "TIGER" and the "FAST" infrastructure investment programs, as set forth below.

Section 5601 of the new chapter 56 proposes a "TIGER" infrastructure investments grants program to leverage Federal dollars in Fiscal Years 2015 through 2018 and focus on investments of national and regional significance. Under this authority, the Secretary would award grants to State, tribal, and local governments, transit agencies, and port authorities for capital investments in the Nation's surface transportation infrastructure, including roads and highways, public transportation facilities, freight and passenger rail, and port infrastructure. The Secretary would be authorized to award these funds on a competitive basis, and select merit-based projects that make a significant impact on the Nation, a metropolitan area, or a region. Up to 10 percent would be available for planning purposes.

The new authority would continue the successful criteria of the TIGER Grants in fiscal years 2009-2014 and would ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. Not less than 20 percent would be available for rural areas. The Secretary would give priority to projects that require a contribution of Federal funds in order to complete an overall financing package, and set minimum and maximum grant sizes and a limitation on the amount of funding that may be awarded to projects in any individual State. Not more than 25 percent of the funds authorized would be awarded to a single State. In addition, the Secretary could use up to 10 percent of the funds authorized under this section to help grantees pay for TIFIA subsidy and administrative costs.

Section 5602 of the new chapter would establish a competitive grant program called Fixing and Accelerating Surface Transportation (or "FAST"). Modeled after the Department of Education's Race to the Top program, this program would award funding to a State, Tribe or MPO to incentivize the adoption of bold, innovative strategies and best practices in transportation that would have long-term impact on all projects across the transportation programs. Applicants would have to demonstrate a strong collaboration with all levels of government within their jurisdiction to be successful.

Funding awarded under this program could be used to build a program of projects submitted as part of the application and that demonstrated support and furtherance of the best practices and innovative strategies profiled in the application. The list may include anything eligible for any surface transportation project. The size of each award would be based on an awardee's Federal transportation formula allocation, but would be no less than \$50,000,000.

One quarter of the funds made available under this program would be set-aside as Metropolitan Mobility funds, and would be made available to qualifying high-performing MPOs defined in Section 1202. The funding would be distributed on the basis of population, with a \$1 million floor and \$3 million annual cap. Funds would be reserved for MPOs over the period of the 4 years, so that MPOs qualifying as high-performing

MPOs by the final year of the bill would be eligible to receive their four-year allotment. Funds reserved for MPOs that did not qualify for the high-performance designation would be returned to the FAST program for distribution as discretionary grants. MPOs could use Metropolitan Mobility Funds for any project or activity eligible under title 23 or chapter 53 of title 49, or as the 20% local match requirement to other Federal funds.

**SEC. 1402. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 AMENDMENTS.**

This section would clarify the contingent nature of master credit agreements and change the TIFIA definition of a "rural" area to a more common sense understanding of rural that has been used by the Department for meeting the TIGER Discretionary Grant rural set-aside requirements. It would make TIFIA loans more useful for projects less than \$75 million in size by providing the Department with the ability to set aside program funding for the explicit purpose of replacing the fees typically collected from TIFIA borrowers to pay for independent financial analysis and outside counsel. These fees typically run in the \$300,000-\$500,000 range, so the up to \$5 million of available funding that the Department could set aside each fiscal year under this new authority would be able to assist as many as 10 small projects. The section would also provide for increased amounts to TIFIA's administrative funding to allow the program to increase staffing and pay for other necessary resources to manage and oversee its rapidly growing portfolio. Finally, the section would remove the annual requirement to redistribute certain uncommitted funds.

**SEC. 1403. RAILROAD REHABILITATION AND IMPROVEMENT FINANCING.**

This section would revise the Railroad Rehabilitation and Improvement Financing (RRIF) program by amending sections 501-503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821-823) (4R Act).

This section would amend section 501 of the 4R Act by changing the definition of "railroad" to the definition of "railroad carrier" in 49 U.S.C. 20102, to ensure that the loan is being given to an entity rather than a form of transportation.

This section would amend section 502(a) of the 4R Act by clarifying that joint ventures may include two of the eligible entities and by expanding the limited option shipper category to ensure that current non-rail shippers can apply for funds if they will become rail shippers. In addition, this section would make clear that if there is no rail connection, eligible applicants can apply for funds to create one.

This section would amend section 502(b) of the 4R Act by clarifying that costs related to the eligible activities may also be appropriate as determined by the Administrator, and by making clear that both new and improved projects can be refinanced.

This section would amend sections 502(f) and 503(c) of the 4R Act by clarifying that a borrower may pay for modification costs in the same way it pays for a credit risk premium. This permits the Federal Railroad Administration (FRA) to be a more responsive lender. This section would further amend section 502(f) by deleting paragraph (4), entitled Cohorts of Loans. The effect of this deletion is to eliminate the Secretary's obligation to 1) establish cohorts of loans and 2) repay credit risk premiums with interest.

This section would amend section 502(h) of the 4R Act by clarifying that going concern valuation will be used only when applicable (since it is not applicable to individual pieces of collateral, but business enterprises as a whole). This section also clarifies that the Secretary's liens under the RRIF program may be senior to the Secretary's liens under other programs. This section would also provide that financial assistance provided under the RRIF Program could not exceed 80% of the reasonably anticipated eligible project costs for projects with total eligible project costs estimated to exceed a determined amount and where the Government pays a positive subsidy cost at the time of origination.

This section would amend section 503(k) of the 4R Act by clarifying and expanding the authority for use of the evaluation charge, increasing the amount that can be charged from ½ of 1 percent to 1 percent of a requested obligation. In addition, this provision provides that the Secretary shall prescribe standards for applying the charges to ensure that the RRIF charges do not prevent Class II and Class III railroads from having adequate access to direct loans and loan guarantees. The provision also clarifies that FRA may collect into FRA's Safety and Operations account and spend to pay for charges incurred in the evaluation options regarding events of default. The language also clarifies that the charge is assessed on the requested amount, not the amount actually obligated, which enables FRA to pay for the evaluation of loans that are ultimately denied.

This section would also authorize appropriations for the cost of direct loans and loan guarantees under the RRIF program, with the goal of increasing the ease of access to the program, particularly for smaller borrowers. This provision will make the RRIF program more similar to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which has been highly successful at attracting a range of project types.

#### **SEC. 1404. STATE INFRASTRUCTURE BANK PROGRAM.**

This section would update the apportioned programs referenced in section 610, to align with the program structure under MAP-21, and would revise the referenced fiscal years to allow States to use a portion of their newly apportioned Federal-aid funds to capitalize SIBs.

#### **SEC. 1405. TOLL ROADS, BRIDGES, TUNNELS, AND FERRIES.**

This section would amend the Federal toll requirements in 23 U.S.C. 129 by eliminating some redundancy in the existing language as well as ensuring consistency with the toll requirements in 23 U.S.C. 166. This section also would eliminate the prohibition on

tolling existing free Interstate highways, subject to the approval of the Secretary, for purposes of reconstruction, thus providing States greater flexibility to use tolling as a revenue source for needed reconstruction activities on all components of their highway systems. This section would allow any State or public agency to impose variable tolls on existing highways, bridges, or tunnels for purposes of congestion management, subject to the approval of the Secretary.

This section also would make minor amendments with respect to the conversion of HOV lanes to toll facilities in order to eliminate confusion regarding the applicability of Federal requirements. MAP-21 included these provisions in 23 U.S.C. 129 to clarify that High Occupancy Vehicle (HOV) conversions are permissible under Federal law. The elimination of these provisions would neither restrict nor enhance the States' authority to convert HOV lanes because the related provisions in 23 U.S.C. 129 and 23 U.S.C. 166 are redundant.

This section also would eliminate the prohibition against tolling existing free Interstate highways for purposes of reconstruction by extending the eligibility that currently exists for the reconstruction of non-Interstate highways. In doing so, this section would render the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP) established under section 1216(b) of TEA-21 unnecessary, which would thus be repealed by this section.

This section also would allow toll revenues to be used for costs necessary for improving public transit service, provided such service is provided within the transportation corridor in which the toll facility is located or the service contributes to the improved operation of the toll facility or the highway on which the toll facility is located. This section would further authorize the use of toll revenues for costs necessary to mitigate adverse impacts related to the tolling of the facility as identified under the NEPA process. It also would allow toll revenues to be used for other purposes eligible under title 29 or chapter 53 of title 49, if the public authority certifies annually that the tolled facility is being adequately maintained.

This section would also require that, after October 1, 2015, new toll facilities on Federal-aid highways use only non-cash electronic technology for toll collection. The future effective date is intended to grandfather in existing section 129 toll facilities and any new facilities that may already be in advanced stages of development at the time of enactment.

Finally, this section would increase the eligibility for the construction of ferry boats and ferry terminal facilities for ferries that carry commercial motor vehicles in addition to passengers and cars. The purpose of this addition is to integrate freight transportation into the ferry boat program, which provides a critical commerce link that cannot occur otherwise.

**SEC. 1406. TAX-EXEMPT FINANCING FOR QUALIFIED SURFACE TRANSPORTATION PROJECTS.**

This section would increase by \$4 billion the amount of qualified highway or surface freight transfer facility bonds. These types of bonds are a permitted category of tax exempt private activity bond that permit private involvement in qualified highway or surface transfer projects. The proposed increase is consistent with the Administration's policy of supporting investment in highway and freight transfer projects, especially in light of the expansion of the Transportation Infrastructure Finance and Innovation Act as part of the recent Moving Ahead for Progress in the 21st Century Act's surface transportation reauthorization.

#### **SEC. 1407. PAY FOR SUCCESS.**

This section would require the Secretary of Transportation to encourage the use of pay for success contracting within transportation programs. This proposal would help to ensure that intended outcomes are being achieved. The pay for success model is a form of performance-based contracting, under which a government agency commits funds to pay for a specific outcome that is achieved within a given timeframe, and payment of the committed funds by the government agency is contingent on the validated achievement of results.

### **TITLE II--FEDERAL-AID HIGHWAYS**

#### **Subtitle A--Authorizations and Programs**

#### **SEC. 2001. AUTHORIZATION OF APPROPRIATIONS.**

Subsection (a) of this section would authorize sums out of the Highway Account of the Transportation Trust Fund for the highway safety improvement program, the national highway performance program, the surface transportation program, the congestion mitigation and air quality improvement program, metropolitan transportation planning, the transportation infrastructure finance and innovation program, and Federal allocation programs. It would authorize sums out of the Highway Account of the Transportation Trust Fund for a new critical immediate investments program, a new program for nationally significant Federal lands and tribal projects, and a new program to provide ladders of opportunity. Subsection (a) would continue existing Federal-aid programs currently funded out of Federal Highway Administration administrative expenses as separately authorized programs and activities at the funding levels specified above to clarify that certain activities are not considered agency administrative expenses, but are separately authorized activities overseen by FHWA. Subsection (a) also would require the Secretary of the Interior to notify the Secretary of Transportation each year when deciding how to allocate Federal Lands Transportation Program (FLTP) funds provided to the Department of the Interior among its agencies receiving funds, specifically the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Reclamation. The FLTP funds projects to improve access on lands owned by the Federal government, such as national forests, parks, wildlife refuges, and other Federal public land.



Subsection (b) of this section would define the terms "small business concern" and "socially and economically disadvantaged individuals"; establish a general rule for the expenditure of funds under certain titles of this Act and section 403 of title 23; require States to provide the Secretary with an annual listing of disadvantaged business enterprises and reporting; require the Secretary to establish minimum uniform criteria for use by State governments in determining whether a concern qualifies as a small business concern; and preserve the eligibility of individuals or entities to receive funds if they are prevented from complying with this section due to a court order.

Subsection (c) of this section would make conforming amendments to align with the changes in subsection (a) to separately authorize certain programs currently funded out of FHWA administrative expenses.

#### **SEC. 2002. OBLIGATION LIMITATION.**

This section provides obligation limitation for FY2015-FY2018 for Federal-aid highway and highway safety construction programs.

#### **SEC. 2003. APPORTIONMENT.**

This section would amend section 104 of title 23, United States Code, to authorize sums out of the Highway Account of the Transportation Trust Fund for administrative expenses for the FHWA for fiscal years 2015 through 2018. This includes amounts that the FHWA would transfer to the Appalachian Regional Commission for its administrative expenses during those fiscal years.

This section also would amend section 104 to extend beyond 2014 the MAP-21 construct for calculating State apportionments.

This section would also authorize as a takedown from the apportioned programs up to \$25,000,000, in each of fiscal years 2015 through 2018, for implementation of the future strategic highway research program findings and results. It also provides a conforming amendment to 505 of title 23, United States Code.

#### **SEC. 2004. FEDERAL LANDS TRANSPORTATION PROGRAM.**

Subsection (a) of this section would make some clarifying and technical modifications to definitions in section 101(a) of title 23, United States Code. Under MAP-21, the definition of "Federal lands transportation facility" in section 101(a)(8) has created some confusion in the administration of the Federal Lands Transportation Program (FLTP). Specifically, the words "is adjacent to" could be considered to include any public road outside the Federal estate. The FLTP is intended to focus on a strategic, high-use transportation system that directly accesses Federal lands. Subsection (a) of this section would remove the words "is adjacent to" to remedy the confusion and clarify congressional intent. Subsection (a) also would remove the definitions of "forest

development roads and trails" and "forest road or trail" under sections 101(a)(9) and (10), which are no longer necessary due to the elimination of the Forest Highways Program under MAP-21.

Subsection (b) of this section would remove the \$10 million cap in section 203(a)(1)(D) of title 23, United States Code, on the use of FLTP funds for certain environmental mitigation activities. Environmental mitigation considerations are a routine activity on projects within the Federal estate. Aggregate project expenditures on environmental mitigation and ecosystem connectivity may need to exceed \$10 million in any given year. Moreover, the FLTP requires each agency to submit a proposal to the Secretary that describes how the requested funds will support both DOTs and the Federal Lands Management Agency (FLMA) goals. This change would present an opportunity for FLMAs to describe their environmental mitigation goals and related investments without the need for a cap.

Subsection (b) of this section also would make a technical correction to change an erroneous reference from 2011 to 2012.

Finally, subsection (b) would repeal the provision requiring the Secretary of the appropriate Federal land management agency to prohibit the use of bicycles on a federally owned road under certain conditions.

Subsection (c) makes a clarification about performance management in the statute.

#### **SEC. 2005. EMERGENCY RELIEF FOR FEDERALLY OWNED ROADS.**

Subsection (a) would reconcile an inconsistency enacted by MAP-21. Section 125(e) of title 23, United States Code, lists eligible ERFO facilities as being Tribal Transportation Facilities, Federal Lands Transportation Facilities, and Other Federally-Owned Roads that are Open to Public Travel. However, section 120(e) of title 23, United States Code, provides for 100 percent Federal share for ERFO projects on Tribal Transportation Facilities, Federal Lands Transportation Facilities, and Federal Lands Access Transportation Facilities. Thus, Federal lands access transportation facilities are not eligible for Emergency Relief funding, but are provided 100 percent Federal share for ERFO under section 120. Similarly, Other Federally-Owned Road that are Open to Public Travel are eligible under ERFO, but are not eligible for the 100 percent Federal share for ERFO projects under section 120. Subsection (a) would remove Federal Lands Access Transportation Facilities from section 120 and add Other Federally-Owned Road that are Open to Public Travel to the list of ERFO projects eligible for the 100 percent Federal share.

Subsection (b) would clearly authorize ER eligibility for debris removal on Tribal Transportation Facilities, Federal Lands Transportation Facilities, or Other Federally-Owned Roads that are Open to Public Travel. Section 125(d)(3), of title 23, United States Code, limits the ER eligibility for debris removal to non-Presidentially declared disasters or Presidentialy-declared disasters for which debris removal is not eligible under specific

sections of the Stafford Act. Current FEMA regulations that carry out the Stafford Act are silent on the eligibility of debris removal on Federal or Tribal roads, thus making it unclear whether debris removal is an ER-eligible activity during Stafford Act disasters on Federal or Tribal lands.

Subsection (c) would clarify the meaning of the term "open to public travel" and define "standard passenger vehicle." Currently, the term "standard passenger vehicle" is not defined under section 125 of title 23, United States Code, but is used in the definition of "open to public travel." The proposed definition of "standard passenger vehicle" is the same definition that is currently applied to the program.

#### **SEC. 2006. TRIBAL HIGH PRIORITY PROJECTS PROGRAM AND TRIBAL TRANSPORTATION PROGRAM AMENDMENTS.**

This section proposes a number of edits to the Tribal Transportation Program. It would remove the Tribal Transportation Program (TTP) eligibility for "any other transportation project eligible under [title 23]". This eligibility is unnecessary and potentially misleading since tribes must include any transportation facility on the National Tribal Transportation Facility Inventory before projects on those facilities can be eligible for funding.

This section would increase the potential set-aside amount for tribal planning activities from 2 percent to up to 3 percent in order to address increased planning requirements enacted by MAP-21.

This section also would increase the potential set-aside amount for tribal bridge activities from 2 percent to up to 4 percent in order to address additional funding for activities such as bridge inspections of tribal and Bureau of Indian Affairs-owned bridges.

This section would add administrative expenses for TTP and the Tribal High Priority Projects program to the list of set-asides that must be made prior to the TTP allocation. This section also would authorize the Tribal High Priority Projects program, to be funded from a 7 percent set-aside from the TTP. This program would provide a dedicated funding opportunity for smaller tribes to complete critical tribal projects which cannot be solely addressed through their TTP allocation.

Finally, this section would repeal the provision in MAP-21 (section 1123) that authorizes the Tribal High Priority Projects Program as a standalone program. Section 1123 is uncodified and authorized to be funded from the General Fund; however, no funds have ever been appropriated for this purpose.

#### **SEC. 2007. FEDERAL LANDS ACCESS PROGRAM FEDERAL SHARE.**

This section would amend the Federal share for the Federal Lands Transportation Program and the Tribal Transportation Program to give Federal land management agencies and tribes flexibility to leverage other funds towards eligible projects if desired.

This section would increase the Federal share up to 95 percent for projects on a Federal lands access transportation facility owned by a county, town, township, municipal, tribal, or local government. This subsection makes no change to the Federal share for State-owned roads, which is determined in accordance with section 120 of title 23, United States Code.

**SEC. 2008.   NATIONALLY SIGNIFICANT FEDERAL LANDS AND TRIBAL PROJECTS PROGRAM.**

This section would establish a Nationally Significant Federal Lands and Tribal Projects program to provide needed construction, reconstruction, or rehabilitation of large, nationally significant transportation infrastructure within or accessing Federal or Tribal lands. Due to the magnitude of costs, projects of this size generally cannot be advanced within the scope of the existing Federal Lands and Tribal Transportation Programs

**SEC. 2009.   FEDERAL LANDS PROGRAMMATIC ACTIVITIES.**

This section would make a number of changes to the Federal lands programmatic activities provision. This section would clarify that the Indian Self-Determination and Education Assistance Act applies to data collection required to implement the tribal transportation program, rather than data collection required to implement the Federal Lands Transportation Program and Federal Lands Access Program.

This section would add a new eligibility for cooperative research and technology deployment between the Department and appropriate Federal land management agencies. This new eligibility would be funded by the takedown authorized in a new section 201(c)(8) of title 23.

It also would clarify that the 5 percent takedown from the Federal Lands Access Program and Federal Lands Transportation Program for activities under 201(c) (planning, data collection, bridge inspections, and asset management) of title 23, United States Code, may only be used for Federal lands transportation facilities, Federal lands access transportation facilities, and other Federally-owned roads open to public travel.

This section would amend section 201(c)(8) of title 23 to allow such funds to also be used for bridge inspections on any Federally-owned bridge, even if such bridge is not included on the Federal Lands Transportation Program inventory, and for transportation planning activities undertaken by any Federal agency. Federal land management agencies receiving funds under the Federal Lands Transportation Program would also be able to use funds authorized for the Federal Lands Transportation Program to carry out the activities described in section 201(c) of title 23.

This section would clarify that the Tribes and Bureau of Indian Affairs (BIA) may not use the 5 percent takedown for activities under section 201(c) (planning, data collection, bridge inspections, and asset management) of title 23. However, Tribes and the BIA

could continue to use appropriate Tribal Transportation Program and other eligible funds for such activities.

Finally, this section would require the Secretary to convene and chair a Federal Lands Transportation Executive Council (FLTEC). The FLTEC would be comprised of representatives from Federal lands management agencies, and it would meet periodically. The purpose of the FLETC would be to consult on interdepartmental data standardization, technology integration, and interdepartmental consistency.

#### **SEC. 2010. BRIDGES REQUIRING CLOSURE OR LOAD RESTRICTIONS.**

This section would help ensure continued safety of the traveling public by providing the Secretary authority under section 144 of title 23, United States Code, for circumstances when a State, Federal agency, or tribal government fails to properly close or to restrict loads on a bridge that is open to public travel. Under this section, the Federal agency, or tribal government would be responsible for ensuring proper closure or load restriction of bridges under its jurisdiction, and the State would be responsible for all other bridges within its boundaries. The Secretary would require a State, Federal agency, or tribal government to close such a bridge within 48 hours or restrict loads on it within 30 days. Failure of a State to do so could result in the Secretary withholding approval for Federal-aid projects in the State. Failure of a Federal agency or tribal government to close such a bridge or restrict loads could result in the Secretary withholding title 23 funding available to such Federal agency or Tribe.

#### **SEC. 2011. BROADBAND INFRASTRUCTURE DEPLOYMENT.**

This section would further work already being done within the Department of Transportation to coordinate with stakeholders at the Federal, State, and local levels to identify best practices and expand the use of highway rights-of-way to accommodate broadband infrastructure. It would provide that the Secretary shall require State departments of transportation to advance the use of certain best practices to help expand the installation of broadband infrastructure. Best practices would include Statewide broadband coordination, development of a broadband infrastructure coordination plan in each State, increased right-of-way access, and consideration of innovative technologies.

Under this section, States advancing the identified best practices would have authority to use STP and NHPP funds for broadband installation purposes on Federal-aid highway projects in areas unserved or underserved by broadband.

#### **SEC. 2012. CRITICAL IMMEDIATE INVESTMENTS PROGRAM.**

This section would establish the Critical Immediate Investments Program (CIIP) to reduce the number of structurally deficient bridges on the Interstate System, target safety investments on non-State owned roads, and support a state of good repair on the National Highway System (NHS). The CIIP would focus on the reconstruction, restoration, rehabilitation, preservation or safety improvement of existing highway and bridge assets. It would include three initiatives: the Interstate Bridge Revitalization Initiative

(IBRI); the Systemic Safety Initiative (SSI); and the State of Good Repair Initiative (SGRI).

The IBRI would support and supplement the National Highway Performance Program (NHPP) and improve the condition of our nation's highest-priority bridges by decreasing the number of structurally deficient bridges on the Interstate System. The IBRI would help to ensure a reliable network over which people and goods can travel safely and efficiently.

The SSI would support and supplement the Highway Safety Improvement Program (HSIP) and focus on non-State owned roads. States would have the flexibility to use SSI funds on State-owned roads after they address systemic safety needs on non-State-owned roads. In addition, SSI funds would be set-aside to provide grants to local agencies to implement systemic safety improvements, and to allow the Secretary to evaluate the effectiveness of these improvements. In exchange for the funding, the local agency would provide the Secretary with data sufficient to evaluate the effectiveness of the safety projects that the agency implements. The increased safety funding for these roads would help to save lives and prevent serious injuries.

The SGRI would support and supplement the NHPP by focusing on the rehabilitation and preservation of existing NHS assets. This initiative would focus on pavements and bridges that need immediate preservation or rehabilitation to prevent these assets from reaching a "poor" condition and requiring more costly repair or replacement in the future. States would use information from their bridge and pavement management systems to identify eligible projects. States would have the flexibility to transfer SGRI funds to the IBRI or SSI if the Secretary determines that the transfer would help the State to meet its performance targets related to safety or condition of the NHS.

### **SEC. 2013. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.**

This provision would provide additional flexibility for the use of Appalachian Development Highway System (ADHS) funds by allowing a State to provide a match for the ADHS funds. Current law prohibits a State match for ADHS funds.

#### Subtitle B--Performance Management

### **SEC. 2101. PERFORMANCE MANAGEMENT DATA SUPPORT PROGRAM.**

This provision would authorize a Performance Management Data Support program to assist metropolitan planning organizations (MPOs), States, and the Department in carrying out the performance management requirements contained in title 23, United States Code. The purpose of this proposal is to provide comprehensive resources and analytical tools for the use of States and MPOs in responding to the Moving Ahead for Progress (MAP-21) performance management requirements. This proposal would enable FHWA to provide enhanced data and tools to assist States and MPOs in targeting operational and capital investments strategically, and implement policies effectively in

support of the national transportation system. U.S. DOT is in a unique position to develop national-level data sets and tools that provide consistency and cost less than developing the same data at the State or local level. A national-level Performance Management Data Support program would provide an advanced level of capacity for decision-making to guide investments and policy efforts. The ability to have such advanced capacity for decision-making could lead to significant cost savings to States and others by using data and analytics to define an optimal transportation system.

The proposed program would build on years of FHWA's development and use of performance measurement tools to create a robust, comprehensive, and high quality data and analytical system for planning and decision-making. It differs from the Bureau of Transportation Statistics (BTS) proposed Intermodal Transportation Data program in that the FHWA proposed program would focus on implementation of the Federal highway performance management program while the BTS proposed program would collect data on the use and value of the transportation system rather than on the system's performance. FHWA and BTS would make available the BTS information on use of the transportation system and the FHWA information on how the system performs for those users to support transportation planning, investment analysis, and management at all levels of government.

#### **SEC. 2102. PERFORMANCE PERIOD ADJUSTMENT.**

Under MAP-21, States and MPOs have two performance periods to meet the targets they set for themselves under each of the performance measures. Under this provision, that would be reduced to one performance period.

#### **SEC. 2103. MULTIMODAL ACCOMMODATIONS.**

This section would establish a requirement to consider all foreseeable modes of travel in highway designs, including the needs of those using the transportation system via foot, bicycle, and/or public transportation. The section would also modify the Transportation Alternatives program to enable programs of bicycle and pedestrian projects to be considered jointly for the purposes of the 80 percent Federal share requirements, in order to facilitate implementation of these small-scale projects. It also would restore eligibility to nonprofit organizations, which have often administered Safe Routes to Schools programs.

### Subtitle C--Improved Federal Stewardship

#### **SEC. 2201. PROJECT APPROVAL AND OVERSIGHT.**

This section would allow a State to use Surface Transportation Program (STP) funding to cover its costs associated with overseeing and administering locally-administered Federal-aid highway projects and activities. To obligate STP funds for such purpose, a State would submit an annual work plan to the Secretary for approval prior to the beginning of the fiscal year. The amount of funds that a State could use for

administration and oversight responsibilities in a fiscal year would be limited to three percent of the portion of its annual STP apportionment that is available for obligation in any area of the State under section 133(d)(1)(B) of title 23. Allowing States to recoup costs of LPA oversight activities mandated in section 106(g) should improve State oversight of LPA projects.

#### Subtitle D--Other

### **SEC. 2301. LETTING OF CONTRACTS.**

This section would amend section 112 of title 23, United States Code, to authorize the Secretary to establish standards under which a contract for construction may be advertised that contains "local hiring" requirements in some limited circumstances. It also clarifies that States may enact "pay-to-play" laws without violating Federal contracting requirements in the case of highway funding under title 23.

### **SEC. 2302. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.**

This section would revise authorization dates to reflect this 4-year authorization.

### **SEC. 2303. GREEN STORMWATER INFRASTRUCTURE.**

This section would clarify that green stormwater infrastructure is an eligible activity under section 23 USC 328, Eligibility for environmental restoration and pollution abatement. Section 328 is cross-referenced in section 119(d)(1)(M) of Title 23 USC, which lists eligible projects for the national highway performance program, as well as in section 133(b)(17), which lists eligible projects for the surface transportation program. Section 328 is also cross-referenced in the definition of transportation alternatives in section 101(a)(29)(F).

### **SEC. 2304. ELIMINATION OR MODIFICATION OF CERTAIN FHWA REPORTING REQUIREMENTS**

(a) Section 6016 of PL 102-240 (ISTEA) relates to research concerning the fundamental properties of asphalts. Subsection (g) requires the Secretary to report to Congress annually on the progress made in implementing the provision. Because of prior sufficient funding, no additional funding has been provided for this section since 2011. Although the research continues, annual reports have been very technical, and the detailed results of the research have been made available to FHWA and the engineering community by Western Research Institute (WRI). Results of the research are posted on the Internet. For these reasons, the annual report to Congress creates a time consuming redundancy and should be deleted.

(b) Section 1301(k) of Public Law 109-59 (SAFETEA-LU) requires the Secretary to report, not later than the first Monday in February of each year, on the Department's proposed allocation of amounts to finance projects under the discretionary



program known as Projects of National and Regional Significance. This program was fully earmarked from 2006 through 2009 and the program funds were formula allocated to the States in Fiscal Year 2010 and beyond. Therefore, the report has never fulfilled its intended purpose of informing Congress of the Departments selection of discretionary grants. In recent years, with formula allocation, the report is even less relevant as we do not generally report on formula projects. For these reasons this report should be eliminated as obsolete.

(c) Section 1604 of SAFETEA-LU requires the Secretary to submit annual reports to Congress on the uses of the funds under this section and additional reports every three years on any successes achieved under this program. No funding was ever specifically authorized for this program, and although Federal aid funds were used in the past, no agreements for the program have been signed since September 30, 2009. The reporting requirement is obsolete and should be eliminated.

(d) Subsection (e) of section 327 of title 23 requires the Secretary to submit an annual report on administration of the Surface Transportation Project Delivery Pilot Program. Since 2007, California has been the only participating State. Due to a lack of data, the report is meaningless and should be eliminated.

(e) Section 139(h)(7)(B) of title 23 requires the President to report every 120 days on certain projects and activities that require the preparation of an annual financial plan and as well as a sampling of projects requiring preparation of an environmental impact statement or environmental assessment in each State. The frequency of the report results in issuance of reports with little or no changes. In order to improve efficiency for issuance of a meaningful report, this subsection proposes an annual report versus the current 120 reporting cycle.

### **TITLE III--PUBLIC TRANSPORTATION**

#### **SEC. 3001. SHORT TITLE; AMENDMENTS TO TITLE 49, UNITED STATES CODE.**

This section would provide that the title may be cited as the "Federal Public Transportation Act of 2014". It also provides that, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

#### **SEC. 3002. DEFINITIONS.**

This section would amend the definition section under section 5302 to define the term "base-model bus." FTA intends to allow up to an 85 percent share for the acquisition of a base-model bus. It also would clarify the definition of "designated recipient." It also adds a definition for value capture, the proceeds from which are eligible as a local match under chapter 53.

#### **SEC. 3003. FORMULA GRANTS FOR ENHANCED MOBILITY.**

This section would amend the formula grants for the enhanced mobility of seniors and individuals with disabilities program to include local governmental entities as direct recipients.

#### **SEC. 3004 FORMULA GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.**

This section would amend the Tribal Transit Formula program under section 5311 to increase the set aside to be disturbed pursuant to the formula under subsection (j) and also would amend subsection (j) to ensure that an eligible recipient receives no less than \$20,000.

#### **SEC. 3005. WORKFORCE DEVELOPMENT PROGRAM.**

The Ladders of Opportunity Grant Program is intended to fund and support innovative workforce development programs that carry out specific transit-focused workforce efforts at the regional and/or national level. These efforts are aimed at meeting the skills gap in the transit industry, particularly with respect to the maintenance and repair of alternative fuel and other green technology vehicles and equipment. Pilot workforce development programs funded by FTA in FY12 and FY13 indicate that training is needed specifically in such areas as alternate fuel and hybrid drive technology and facilities; electronic processes, new on-board communication technologies; safety enhancements; and computer programming and software development. This program would specifically target areas of high unemployment and other underserved communities and populations. It is intended to be a discretionary grant program (much in the vein of TIGER and our other discretionary grant programs), with no ongoing obligation to USDOT/FTA to maintain each individual workforce program.

The proposed Public Transportation Institute is our next iteration of the National Transit Institute, created under ISTEA, which until the enactment of MAP-21, was earmarked for Rutgers University. The National Transit Institute has historically focused on direct training to the transit industry workforce - that is, it offers a variety of classes (in areas ranging from Transit Oriented Development to Construction Project Contracting to Transit Service Planning) in a classroom format directly to transit agency staff and other government officials (including federal employees) for free. To stay consistent with our previous reauthorization proposal, and to embody a competitive spirit consistent with the post-earmark era, we are proposing a program that is competitively funded. This would also give FTA the opportunity to rebid a center with a wider focus to blue-collar transit workforce training issues as well.

#### **SEC. 3006. GENERAL PROVISIONS.**

This section would amend section 5323(i) by providing up to an 85 percent Federal share for the acquisition of base-model buses supported with Federal transit assistance under chapter 53.

The Buy America provisions under subsection (j) are amended to reflect the Administration's desire to encourage transit vehicle manufacturers (TVMs) to acquire a greater number of components from firms with manufacturing facilities within the United States, thereby preserving and protecting our domestic manufacturing base. The proposal requires that final assembly of rolling stock prototypes occur in the United States. Moreover, rolling stock, including train control, communication, traction power equipment, and rolling stock prototypes, are subject to a newly established increase in the cost of components and subcomponents. The requirement for domestic components must be greater than 60 percent in 2015. The requirement would increase to at least 70 percent in fiscal year 2016, at least 80 percent in fiscal year 2017, and at least 90 percent in fiscal year 2018. By 2019, 100 percent of the cost of components and subcomponents for rolling stock, including rolling stock prototypes, would have to be produced in the United States. The increase is staggered over a five-year period to enable TVMs to enlist a greater number of US-based vendors, and to give vendors time to relocate or commence manufacturing activities within the United States.

A new subsection (s) provides that revenues from value capture financing mechanisms may be used as a local match for eligible capital and operating expenses.

#### **SEC. 3007. PUBLIC TRANSPORTATION LOCAL HIRING.**

This section would amend section 5325 to allow a recipient to advertise and award a contract for construction containing requirements for the employment of individuals residing in or adjacent to any of the areas in which the work to be performed is for construction work required under the contract in some limited circumstances.

#### **SEC. 3008. PUBLIC TRANSPORTATION SAFETY PROGRAM.**

This section would amend the Public Transportation Safety Program under section 5329 to allow States having within their jurisdiction one or more fixed guideway public transportation systems in revenue service, design or construction with fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year or which provide fewer than 10,000,000 combined actual and projected unlinked passengers trips per year to opt out of the State Safety Oversight program. If the Secretary approved an exemption in such a case, the Secretary would oversee the safety of the system consistent with the oversight and enforcement authority under this section. This section would also amend current subsection (g) to provide stronger enforcement authority by allowing the imposition of civil and criminal penalties. This section would also be amended to authorize the Secretary to have emergency authority to issue orders to restrict or prohibit an unsafe condition or practice. A new subsection (l) providing for the non-disclosure of safety-related information has been added.

#### **SEC. 3009. AUTHORIZATIONS.**

This section would amend section 5338 to reflect that all chapter 53 grant program funding, including administrative expenses, is to be derived from the Mass Transit

Account of the new Transportation Trust Fund. All such funding is contract authority and would remain available until expended.

#### **SEC. 3010. BUS AND BUS FACILITIES PROGRAM.**

This section would amend the definition of "eligible recipient" to indicate that State and local governmental entities are eligible to apply directly to FTA for grant funds. It also would amend the formula program to include a discretionary component under which projects would be competitively selected for funding.

#### **SEC. 3011. RAPID GROWTH AREA TRANSIT PROGRAM.**

This section would establish a new discretionary capital investment program to address the emerging needs of rapidly growing urbanized or rural areas under 49 U.S.C. 5341. The purpose of the program is to improve mobility in communities experiencing fast population increases. It would help to ease the stress and strain of rapid growth while also meeting the growing demand for transit services, as evidenced by national trends. Grants would be made on a competitive basis to State and local governmental entities for bus rapid transit projects, which may include acquisition of right-of-way or land for purposes of future enhancements to public transportation in the project corridor. A project would have to serve a high-traffic transportation artery located in an urbanized area that has experienced moderate to significant population growth between the 2000 and 2010 decennial census of population. The project must be necessitated by a transit system in revenue service that has experienced a moderate to significant increase in ridership; and the recipient must have the financial capacity to pay operating expenses for the existing system and an expanded system. Up to 30 percent of the net project costs may be derived from Federal-aid Highway program funds made available to carry out eligible highway projects activities under title 23 that have a direct nexus to a bus rapid transit project receiving assistance under this section.

#### **SEC. 3012. TECHNICAL CORRECTIONS.**

Subsection (a) of this section would amend the Statewide and nonmetropolitan transportation planning provisions to clarify that the State's selection of performance targets for small urbanized areas and rural areas must be coordinated to the extent practicable with public transportation providers. It also would clarify that public transportation providers are not required to produce performance-based plans under the title 23.

Subsection (b) would amend the Urbanized Area Formula Grants Program to in section 5307(a)(2) to allow general public demand response service operators in large UZAs to use section 5307 funds for operating assistance.

Subsection (c) would amend sections 5309(d)(1)(B), 5309(g)(2)(a)(i) and 5309(d)(2)(A) to eliminate the redundant usage of the phrase "policies and land use patterns that promote public transportation."

Subsection (d) would amend the Research, Development, Demonstration and Deployment provisions under section 5312(d)(5)(A) to provide the accurate citation for the definition of "maintenance area" and clarifies that not only a designated recipient, but also a State or local governmental entity, may be an eligible direct recipient of Low or No Emissions Vehicle Deployment funds in an eligible area over 200K in population. Section 5312(d)(5)(D) is amended to clarify that of the amount available to carry out section 5212, a sum, in an amount determined by the Secretary, is available to carry out section 5312(d)(5) low-emission vehicles and facilities activities. This flexibility would allow sufficient funds for other types of section 5312 research projects.

Subsection (e) would amend the Bicycle Facilities under section 5319 to strike the reference to section 5309 as bicycle facilities are not an eligible activity under the section 5309 new starts and core capacity programs. The other amendments eliminate incorrect and unnecessary statutory references.

Subsection (f) would amend section 5322, Human Resources and Training, to allow States and public transportation agencies to use 0.5 percent of their section 5307 and 5309 funds for educating and training State and local transportation employees at not only the NTI but for all training permitted under section 5322.

Subsection (g) amends section 5336, Apportionments of Appropriations for Formula Grants to fix an incorrect statutory reference in subsection (a).

Subsection (h) would amend the State of Good Repair provisions under section 5337 to correct an incorrect statutory reference in subsection (c)(2)(B). It would also clarify the definition of "motorbus" in subsection (d)(1) to be only those motorbuses using HOV lanes during peak hours and ensures that funds are available only for the purposes of maintaining the state of good repair of motorbus vehicles. A matching share provision is also added at the end as subsection (e).

Subsection (i) would clarify that a 0.75 percent takedown for oversight applies to amounts made available to carry out the entire State of Good Repair program, and not only the fixed rail guideway portion of that program. It would also clarify that 0.75 percent is to be taken from amounts made available to carry out the bus and bus formula program for oversight.

Subsection (j) would clarify that mobility management and preventive maintenance are not eligible capital project activities under the section 5339 Bus and Bus Facilities Formula program. It also would also clarify that, in addition to designated recipients, State and local governmental entities are the only eligible direct recipients under the program.

Subsection (k) would correct a statutory reference in section 5340(b) of Growing States and High Density States formula provisions.

Subsection (l) would clarify that the Surface Transportation Board's (STB) jurisdiction was not inadvertently expanded when the term "mass transportation" was replaced by "public transportation" in the Moving Ahead for Progress in the 21st Century (MAP-21) Act. MAP-21 did not update the term as used in section 10501 of title 49, the source of STB's jurisdiction. This amendment substitutes the correct term throughout section 10501.

**SEC. 3013. TECHNICAL CORRECTIONS TO TITLE II, DIVISION B, OF MAP-21.**

This section would amend section 20013(d) of MAP-21 to reference section 5307(b) instead of section 5307(c).

**SEC. 3014. ELIMINATION OF FTA ANNUAL RESEARCH REPORTING REQUIREMENT.**

Section 5312 of title 49 requires the Secretary to report annually on research assistance provided under this section. The content of the report is already captured annually in the President's budget which is released contemporaneously with this report. The President's budget is posted online and is freely available.

**TITLE IV--HIGHWAY AND MOTOR VEHICLE SAFETY**

**Subtitle A--Traffic Safety**

**SEC. 4001. AUTHORIZATION OF APPROPRIATIONS.**

This section would authorize funds, out of the Highway Account of the Transportation Trust Fund, for the agency's administrative expenses, highway safety research programs and highway safety grant programs, including the section 402 program and the section 405 National Priority Safety Programs.

**SEC. 4002. HIGHWAY SAFETY PROGRAMS.**

This proposal would include emerging traffic safety issues related to older drivers and emergency medical services response to crash sites to the uniform guidelines promulgated by the Secretary, and require States to provide satisfactory assurances that the State will implement activities designed to decrease deaths and injuries to pedestrians and bicyclists traveling in the roadways.

In addition, this proposal would require that any State or jurisdiction designated high-risk (due to management, staffing, financial issues, etc.) take adequate steps to address identified deficiencies. In the first fiscal year in which a State is designated high-risk, section 402 grant funds would be redirected to address the deficiencies. A State that fails to address deficiencies after more than 1 year would have at least 20% of the subsequent

year section 402 grant funds withheld. This percentage would increase in the following years.

Also, this provision would allow a State to expend 402 funds for purposes authorized in section 403. The current provision expressly prohibits a State from spending section 402 funds on highway construction activities as well as for any purpose (other than demonstration projects) under section 403. The current provision limits State flexibility to use section 402 on agency cooperative projects that are also funded with section 403. This provision would restore that flexibility while retaining the prohibition on construction activities.

**SEC. 4003. AMENDMENT TO SECTION 405 NATIONAL PRIORITY SAFETY PROGRAMS TRANSFER AUTHORITY.**

This proposal would require a State to use not less than 30 percent of transfer funds for pedestrian and bicycle safety if the State's combined pedestrian and bicycle fatalities exceed 5 percent of the State's total crash fatalities, based on the most recently reported final Fatality Analysis Reporting System data, if the Secretary transfers any unallocated Section 405 amounts to Section 402.

**SEC. 4004. AMENDMENT TO MOTORCYCLIST SAFETY GRANT CRITERIA.**

This proposal would allow the Secretary or his designee to engage in activities with States and State legislators to consider proposals related to motorcycle helmet use laws.

**SEC 4005. AMENDMENT TO GRADUATED DRIVER LICENSING INCENTIVE GRANT CRITERIA.**

This proposal would revise the criteria States must meet to receive section 405(g) graduated driver licensing (GDL) incentive grant funding. Under MAP-21, States were required to meet many prescriptive criteria to qualify for grant funds. The proposed revisions maintain some of the criteria as basic requirements and give States flexibility to comply by meeting a specified number of the remaining criteria. This proposal also creates a separate grant using a portion of the GDL grant funds that incentivizes the adoption by States of the Novice Teen Driver Education and Training Administrative Standards and more stringent requirements during the intermediate stage.

**SEC. 4006. AMENDMENT TO IGNITION INTERLOCK GRANT CRITERIA.**

This proposal would revise the criteria States must meet to receive section 405(d) ignition interlock grant funding. Requirements for this grant were so restrictive that few States qualified for funding. This proposal would provide for the alternative option of a 24-7 sobriety program in specified cases where the State does not have a complying ignition interlock law.

**SEC. 4007. AMENDMENT TO REPEAT OFFENDER AND OPEN CONTAINER CRITERIA.**

The proposal would revise the criteria that States must meet under the repeat offender program (23 U.S.C. 164). The revised criteria would emphasize the importance of ignition interlocks (and a 24-7 sobriety program alternative) as a tool to reduce recidivist behavior by individuals convicted of multiple DUIs. The revisions also would remove vehicle-sanction-based requirements that were features of the original statutory language and that have outlived their usefulness with the increased use of ignition interlocks. Overall, the changes would add flexibility for States seeking to comply and would not adversely affect any States that currently comply.

This proposal would also revise the requirements under the repeat offender (23 U.S.C. § 164) and open container programs (23 U.S.C. § 154) to require States to use not less than 5 percent of transfer funds to address emerging traffic safety issues related to pedestrian and bicycle safety if the State's combined pedestrian and bicycle fatalities exceed 5 percent of the State's total crash fatalities.

In addition, the agency would revise the requirements under the repeat offender (23 U.S.C. § 164) and open container programs (23 U.S.C. § 154) to allow non-compliant States to use a limited amount of transfer funds on general traffic safety enforcement activities, which can result in increased impaired driving enforcement. The current provisions limit the use of transfer funds to specific alcohol impaired-driving countermeasures and enforcement only. This expansion would provide States with more flexibility, and should result in more timely expenditure of funds. This proposal would make no changes to existing provisions that allow non-compliant States to use funds for highway safety improvement program activities administered by FHWA.

**SEC. 4008. AMENDMENT TO DISTRACTED DRIVING GRANT CRITERIA.**

This proposal would revise the criteria States must meet to receive section 405(e) distracted driving grant funding. MAP-21 prescribed very specific requirements to qualify for grant funds. This proposal would retain those requirements and create separate grants for States that meet some but not all requirements, using a portion of the distracted driving grant funds. Requirements would become stricter in future grant years. The purpose of these grants is to encourage the enforcement of existing distracted driving laws, while providing States with an incentive to strengthen those laws.

**SEC. 4009. STREAMLINING OF NATIONAL PRIORITY SAFETY PROGRAMS.**

This proposal would eliminate the Maintenance of Effort (MOE) requirement of section 405 (b), (c) and (d), which requires States to have aggregate expenditures for section 405 grant programs at or above the average level of the previous 2 years. These programs are



now mature, and States recognize the need to maintain funding for traffic safety purposes. The MOE requirement places an administrative burden both on the States, forcing them to spend resources to document and monitor all State expenditures in these areas, and on the agency to monitor adherence to the requirements. The existing matching requirement for these programs serves the purpose of assuring that States maintain adequate levels of highway safety spending.

**SEC. 4010. AMENDMENT TO HIGHWAY RESEARCH AND DEVELOPMENT.**

This amendment would provide flexibility to the Secretary to determine the appropriate Federal share in programs outside the State highway safety grant programs.

**Subtitle B--Motor Vehicle Safety**

**SEC. 4101. AUTHORIZATION OF APPROPRIATIONS.**

This section would authorize funds, out of the Highway Account of the Transportation Trust Fund, for the agency's motor vehicle safety programs and research and development. Subsection (b) specifies that the contract authority provisions of Chapter 1 of title 23, United States Code apply to these programs, and provides flexibility to the Secretary to determine the appropriate Federal share.

**SEC. 4102. RECALL OBLIGATIONS UNDER BANKRUPTCY.**

This proposal would amend the current statutory requirements that require manufacturers going through bankruptcy proceedings to carry out obligations associated with agency recall requirements. The current statute only covers manufacturers in bankruptcy reorganizations. This would amend the language to cover liquidation bankruptcies, ensuring further protections for consumers against any safety defect or noncompliance determined to exist in a manufacturer's products.

**SEC. 4103. PROHIBITION ON RENDERING SAFETY ELEMENTS INOPERATIVE.**

This proposal would amend chapter 301 of title 49 to permit enforcement actions against persons who use electronic devices to affect the performance of a motor vehicle or motor vehicle equipment of which they are not the individual owner.

**SEC. 4104. COOPERATION WITH FOREIGN GOVERNMENTS.**

This proposal would provide the agency with authority to collaborate with and enter into cooperative agreements with foreign governments. The agency currently is limited in its ability to collaborate with organizations like Transport Canada, the Department in the Government of Canada responsible for transportation matters. While NHTSA operates under broad collaboration arrangements with foreign governments that encourage the

sharing of information, certain research projects would benefit from the ability to also share resources and funding.

**SEC 4105. FUNCTIONAL SAFETY PROCESS.**

This proposal would clarify the agency's authority to prescribe standards or issue guidance for motor vehicle functional safety process standards. These standards would set conditions for compliance based on meeting process requirements in the development and production of electronics and software for motor vehicles and motor vehicle equipment. This would include, but not be limited to, performing process hazard analyses and risk assessments, incorporating fail safe features and taking other actions to ensure that the products perform safely and as intended. These standards differ from the agency's current compliance standards, which are based on a final product's meeting performance requirements when tested in accordance with specified test procedures and conditions. As vehicle technologies evolve and become more heavily based on electronics and software, the agency's ability to set motor vehicle functional safety standards that govern the development, production and use of electronics and software in vehicle will correspondingly become increasingly more important to ensuring consumer safety.

**SEC. 4106. NOTIFICATION OF DEFECT OR NONCOMPLIANCE AND IMMINENT HAZARD AUTHORITY.**

This proposal would provide the agency with authority to issue an administrative order to manufacturers requiring that they cease retail sale and/or require repair of vehicles or equipment that are considered imminent hazards. The threshold for determining an imminent hazard to exist is high and would represent any condition of a motor vehicle or motor vehicle equipment that substantially increases the likelihood of death or serious injury to the public if not discontinued immediately. The authority is necessary in certain cases where harm may occur before an investigation or other administrative hearing or formal proceeding can be undertaken in time to eliminate the risk of harm. The proposal would also amend provisions to permit manufacturers to notify the Secretary about defects and noncompliance by electronic mail.

**SEC 4107. AMENDMENT TO JUDICIAL REVIEW PROVISIONS.**

This proposal would amend the statute to make courts of appeals the exclusive forum for challenges to all final agency actions (rules and orders, including recall orders) under chapter 301 to expedite resolution of all such challenges. The proposal would also include provisions to indicate what the Attorney General must prove in actions concerning recall orders and to authorize the Attorney General to bring civil actions to collect civil penalties in Federal district court.

**SEC. 4108. INSPECTION AUTHORITY UNDER AUTOMOBILE FUEL ECONOMY STATUTE.**

Currently, under section 32910, there is no mention of the Secretary's authority to conduct an inspection or investigation necessary to enforce the automobile fuel economy

chapter or a regulation or order issued under the chapter. Further, under section 32907(b)(1), the Secretary's authority to inspect is limited to "automobiles and records" of a manufacturer, which arguably precludes inspections at dealerships. This proposal would provide the flexibility to conduct fuel economy inspections of automobiles at dealerships to the same extent as the Secretary is authorized to inspect motor vehicles under chapter 301.

#### **SEC. 4109. RECALL AUTHORITY OVER RENTAL CAR COMPANIES AND USED CAR DEALERS.**

This proposal would provide NHTSA with statutory authority to require rental car companies and dealers selling, leasing or renting new and used motor vehicles to remedy defective and noncompliant vehicles before they can make them available for rental, sale or lease to the general public.

#### **SEC. 4110. CIVIL PENALTIES.**

This section would amend 30165 of title 49, United States Code, to: (1) revise paragraph (a)(1) to insert after "violates" in the first sentence, the following: "or causes the violation of"; strike "\$5,000" and insert "\$25,000"; strike "\$35,000,000" and insert "\$300,000,000"; and add at the end of the paragraph: "An individual is liable under this section only for willfully causing or committing a violation. An individual who has been instructed to commit a violation by a person of greater authority in the entity in which the individual is employed has not acted willfully."; (2) revise paragraph (a)(2) to strike, in subparagraph (A), "\$10,000" and insert "\$100,000"; and strike, in subparagraph (B), "\$15,000,000" and insert "\$300,000,000"; and (3) revise paragraph (a)(3) to strike "\$5,000" and insert "\$25,000"; and strike "\$35,000,000" and insert "\$300,000,000".

The revisions to paragraphs (a)(1), (a)(2), and (a)(3) would increase civil penalty limits for violations of specified sections of such chapter or a regulation prescribed thereunder. These increased civil penalty limits would ensure greater compliance with the chapter's requirements. In addition, the revision to paragraph (a)(1) to add the sentence given above to the end of the paragraph would make individuals who commit violations of specified sections of such chapter or a regulation prescribed thereunder, or who cause their companies to violate such sections of such chapter or a regulation prescribed thereunder, liable for civil penalties when they act willfully to cause or commit a violation of the chapter or a regulation prescribed thereunder.

#### **SEC. 4111. TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT OF 2012.**

Subsection (a) would make several technical corrections to the highway safety programs provisions under section 402 of title 23, United States Code. The proposal makes conforming changes to update authorities and references within section 402.

Subsection (b) would clarify that the reference to chapter 301 is a reference to chapter 301 of title 49, United States Code.

Subsection (c) would make changes to the apportionment provisions to ensure consistency in the application of the formula across the National Priority Safety Programs.

Subsections (d) and (e) would make identical corrections to the transfer provisions under section 154 and section 164 of title 23, United States Code. The proposed language would make changes to ensure conformity with substantive amendments to the transfer provisions made under MAP-21.

## **TITLE V--MOTOR CARRIER SAFETY PROGRAM**

### **SEC. 5001. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

This section provides that any reference to a section or other provision in this title is in reference to a section or other provision of title 49, United States Code, unless otherwise expressly provided.

#### **Subtitle A--Commercial Motor Vehicle Safety**

### **SEC. 5101. COMMERCIAL MOTOR VEHICLE DEFINED.**

This section would amend the definition of "commercial motor vehicle" in section 31101(1) of title 49, United States Code, for consistency purposes. The current definition excludes a large number of passenger carriers otherwise subject to the Secretary's safety and commercial jurisdiction. The definition is revised to include all vehicles subject to the Secretary's safety jurisdiction. The revised definition is substantially the same as the definition in 49 U.S.C. 31132(1).

### **SEC. 5102. MOTOR CARRIER OPERATIONS AFFECTING INTERSTATE COMMERCE.**

The amendments provided in this section would ensure that a vehicle, driver or employer prohibited from operating in interstate commerce because the vehicle, driver or employer violations poses an imminent hazard to safety is also prohibited from operating a commercial motor vehicle in any manner affecting interstate commerce. FMCSA has issued imminent hazard out-of-service orders over interstate motor carriers' intrastate operations since 2005, but the proposed amendment would clarify existing authority for these orders. This provision also would ensure that an owner or operator prohibited from operating in interstate commerce because of a failure to pay a civil penalty is also prohibited from operating a commercial motor vehicle in any manner affecting interstate commerce.

### **SEC. 5103. BUS RENTALS AND DEFINITION OF EMPLOYER.**

This section would close a loophole in the Secretary's jurisdiction over certain small bus operations. The Secretary currently has jurisdiction over "employers," who, pursuant to section 31135(a) of title 49, United States Code, must comply with DOT regulations on commercial motor vehicle safety. "Employer" is currently defined in section 31132 of title 49 as a person who (i) owns or leases a commercial motor vehicle in connection with a business affecting interstate commerce, or (ii) assigns an employee to operate such a vehicle. The definition of "commercial motor vehicle" does not include vehicles designed or used to transport nine to 15 passengers, however, unless the passengers are transported for compensation. The alternative basis for jurisdiction does not apply unless the would-be employer "assigns" an "employee" to operate the vehicle.

Companies that rent or lease small buses, but that do not "assign" drivers to operate the vehicles, therefore currently fall outside the Secretary's jurisdiction, even if they provide lists of possible drivers from which their rental customers may choose. These companies' customers – often small colleges, churches, scouting groups, civic clubs and the like, which rent the vehicles for their own use – may assume they are dealing with a charter bus company. Charter bus companies, however, are responsible for the proper maintenance of the vehicle, the physical qualification and drug and alcohol testing of the driver, and other safety regulations, while vehicle rental companies are not. The customers do not intend to take on such safety duties themselves, nor are they often sufficiently trained or knowledgeable to do so. The result is a dangerous gap in safety regulation.

This section would broaden the definition of "employer" to include companies that rent or lease vehicles – whether or not for-hire – if from the same location or as part of the same business the company provides names or contact information of drivers, or holds itself out to the public as a charter bus company.

#### **SEC. 5104. HIGH-RISK CARRIER REVIEWS.**

This section would require the Secretary to ensure that safety reviews of motor carriers are completed for carriers that pose the highest safety risk. The provision carries forward the requirement in section 4138 of SAFETEA-LU, but it eliminates obsolete language in section 4138 referring to motor carriers "rated as category A or B" and codifies the requirement under section 31104. Under a previous FMCSA motor carrier safety scoring system, SAFESTAT, carriers with the worst roadside safety inspection data were categorized as A or B. As part of CSA, FMCSA's comprehensive revised enforcement program, the agency has discontinued use of SAFESTAT and the A and B categories.

#### **SEC. 5105. NEW ENTRANT SAFETY AUDITS.**

This section would grant the Secretary discretion in requiring new entrant safety audits. Experience with safety audits for new CMV operators, since these audits were first required under MCSIA in 1999, has shown them to be of comparatively low safety effectiveness relative to other forms of agency intervention. Moreover, MAP-21 requires

FMCSA to adopt regulations on new entrant knowledge testing, a significant advancement in screening out unqualified and potentially unsafe new entrants. The change proposed in this section thus would allow the Federal Motor Carrier Safety Administration flexibility to better focus resources by requiring safety audits of new CMV owners and operators only where the audits would provide the most value.

**SEC. 5106. IMMINENT HAZARD ACTIONS.**

This section would clarify the timeframe for administrative review of imminent hazard out-of-service orders issued by the Federal Motor Carrier Safety Administration. Current law requires the agency to provide a review, upon request, in accordance with 5 U.S.C. 554, "except that such review shall occur not later than 10 days after issuance of such order." A difference of opinion exists as to whether the agency must grant requests for review submitted after the 10-day period has run. The proposed section would place a clear requirement on the person issued the order to seek a review within 15 days after issuance of the order, otherwise the request would be considered untimely. It would also clarify that the review, if timely requested, must commence within 10 days following FMCSA's receipt of the request.

**SEC. 5107. INTERNATIONAL COMMERCE TRANSPORTED ON HIGHWAYS THROUGH THE UNITED STATES.**

This section would clarify the Secretary of Transportation's and Surface Transportation Board's jurisdiction over the transportation of passengers or property by motor carrier (and procurement of such transportation) between foreign countries, or between two points within the same country, while traveling through the United States. Similarly, it would modify the definition of "interstate commerce" for purposes of FMCSA's safety jurisdiction under subchapter III of chapter 311 of title 49 to clarify the inclusion of trade, traffic, and transportation between foreign countries, or between two points within the same country, to the extent the transportation occurs within the United States.

**Subtitle B--Driver Safety Provisions**

**SEC. 5201. COMMERCIAL DRIVER'S LICENSE REQUIREMENTS.**

This section would prohibit States from issuing commercial driver's licenses to individuals who would immediately be disqualified from operating a commercial motor vehicle upon the issuance of the license. This provision would apply only to disqualifications imposed as a result of offenses committed by the individual while operating a non-commercial motor vehicle.

This section would also remove the requirement that an individual hold a commercial driver's license at the time a disqualifying offense is committed in order for the individual to be subject to disqualification.

**SEC. 5202. DISQUALIFICATIONS BASED ON NON-COMMERCIAL MOTOR VEHICLE OPERATIONS.**

This section would cure an enforcement gap. Under current law the Secretary is not authorized to disqualify a commercial motor vehicle driver if the driver is discovered operating a commercial motor vehicle following a commercial driver's license revocation, suspension or cancellation, or following a disqualification, if the underlying prior offense occurred while the individual was operating a non-commercial motor vehicle. Under the revised provision, the Secretary would be required to disqualify an individual from operating a commercial vehicle for 1 year, for the first violation, or life, for committing two or more violations, respectively, if the individual is discovered operating a commercial motor vehicle after the individual's commercial driver's license has been revoked, suspended, or canceled based on offenses committed by the individual while operating a non-commercial motor vehicle. Likewise, the Secretary would be required to disqualify an individual if the individual is discovered operating a commercial motor vehicle after being disqualified based upon an offense committed while the individual was operating a non-commercial motor vehicle.

**SEC. 5203. RECORDING OF FEDERAL DISQUALIFICATIONS ON CDLIS.**

This section would require a State that issues an individual a commercial driver's license to disqualify the individual from operating a commercial motor vehicle for the period of a Federal disqualification. The State would also ensure that the disqualification and underlying violation be recorded on the Commercial Driver's License Information System.

**SEC. 5204. FAILURE TO PAY CIVIL PENALTY AS A DISQUALIFYING OFFENSE.**

This section would add a new subsection, 49 U.S.C. 31310(h), that would require the Secretary to disqualify an individual from operating a commercial motor vehicle when that individual has not paid a civil penalty previously assessed by the Secretary. This section would also add a new section 31152 to chapter 311 of title 49 U.S.C. in order to impose a similar disqualification for drivers of vehicles between 10,001 and 26,000 pounds who do not hold a commercial driver's license. Disqualification authority for failure to pay civil penalties will greatly assist in the enforcement of Agency regulations. This authority is extended to include compliance with the terms of any settlement agreement to which an individual agrees in lieu of payment of a civil penalty. This section would not apply to any person who is unable to pay a civil penalty because the person is a debtor in a bankruptcy case under chapter 11 of the Bankruptcy Code.

## **SEC. 5205. CONTROLLED SUBSTANCE VIOLATIONS.**

This section would provide that an individual who receives a verified positive USDOT drug test is disqualified from operating a commercial motor vehicle, and remains disqualified until the individual completes the return to duty process required under USDOT regulations.

### **Subtitle C--Medical and Registration Provisions**

## **SEC. 5301. EFFECT OF DRIVING ON COMMERCIAL MOTOR VEHICLE OPERATORS.**

This section would amend the requirement of 49 U.S.C. 31136(a)(4) that safety standards prescribed for commercial motor vehicle drivers ensure that driving does not have a "deleterious effect on the physical condition of the operators." "Deleterious effect" is an overly broad term that could be read as requiring protection of drivers from every possible medical risk, even those unavoidably associated with their work, such as exposure to diesel (and other) exhaust particulates, noise and vibration. Although low-sulfur diesel fuel and better designed vehicles have reduced some of these health risks, motor carrier work inevitably takes a toll on vehicle operators. However, virtually all occupations have some "deleterious effect" on the physical condition of those so employed, and the effects of the job are often difficult to separate from the effects of personal behavior, aging or even genetic disposition. To enable the Secretary to update the Federal Motor Carrier Safety Regulations without risking captious arguments over the exact meaning of "deleterious effect," this section more realistically requires that a commercial motor vehicle safety standard not have a "significantly adverse effect on the physical condition of the operators." While this amendment acknowledges that commercial motor vehicle drivers are affected by their work, it requires the Secretary carefully to avoid adopting motor vehicle safety standards that would make the physical impact of driving significantly worse.

## **SEC. 5302. JURISDICTION OVER BROKERS OF MOTOR CARRIERS OF PASSENGERS.**

This section would amend section 13506(a) of title 49 to permit the Secretary to exercise jurisdiction over brokers for motor carriers of passengers. Currently, property brokers are the only brokers required to register with the Secretary. This provision will enhance the Secretary's ability to prevent unsafe motor carriers of passengers from reorganizing themselves as unregulated business entities. Additionally, passenger carrier brokers will have more of a stake in ensuring motor carriers they work with are safe and authorized to operate in interstate commerce if they are required to comply with the Secretary's commercial registration requirements and are subject to enforcement actions.



**SEC. 5303. REVOCATION OR SUSPENSION OF REGISTRATION.**

This section would modify the grounds for revocation and suspension of a registration under chapter 311 of title 49 and clarify the Agency's authority to immediately revoke a USDOT Number registration under section 31134 if the person fails to satisfy the safety fitness requirements or if the operation constitutes an imminent hazard. This provision is generally patterned after the Agency's existing authority to revoke registration of for-hire, non-exempt motor carriers under 49 U.S.C. 13905(f).

**SEC. 5304. REVOCATION OF REGISTRATION FOR FAILURE TO RESPOND TO SUBPOENA.**

This section would allow the Agency to revoke a motor carrier's USDOT number for failure to comply with a subpoena. The section expands existing authority under section 525 to revoke the chapter 139 registration of motor carriers, motor carriers of migrant workers and private motor carriers. The amendment would also include the registration of medical examiners, authority which would help the Agency enforce requirements of the national registry of certified medical examiners.

**SEC. 5305. LAPSE OF REQUIRED FINANCIAL SECURITY; SUSPENSION OF REGISTRATION.**

Current section 13906(e) requires the Secretary to issue regulations requiring revocation of the registration of a motor carrier or broker whose financial security has been canceled. This section would provide discretion for the Secretary to either revoke or suspend a registration based on lapse of required security. Insurance lapses are often quickly cured by the motor carrier and insurer, and mandatory revocation of the business license is unnecessarily burdensome on both the regulated entity and the Agency. FMCSA believes that, in many cases, suspension would be a more appropriate sanction than revocation. The Agency also notes that, under current regulation, it may assess a \$16,000 civil penalty each day a motor carrier lacks required financial security (49 C.F.R. Part 386, App. B (d)).

**Subtitle D – Grants and Authorizations**

**SEC. 5401. FMCSA FINANCIAL ASSISTANCE PROGRAMS.**

This section would modify FMCSA grant programs under subchapter I of chapter 311 and chapter 313 of title 49. The changes would consolidate existing programs and streamline requirements that benefit both the FMCSA and its State partners. It also would codify provisions governing other grant programs authorized by the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59), as amended by the Moving Ahead for Progress in the

21<sup>st</sup> Century Act (MAP-21) (Pub. L. 112-141), and addresses the Agency's funding levels for fiscal years 2015 – 2018.

Subsection (a) would amend section 31101 of title 49 to define "Secretary" for purposes of subchapter I of chapter 311 in order to avoid repeated references to "the Secretary of Transportation."

Subsection (b) would amend sections 31102, 31103, and 31104.

#### **• Motor Carrier Safety Assistance Program**

Section 31102 of title 49, governing the Motor Carrier Safety Assistance Program (MCSAP), would be revised to include both the New Entrant grant program and the Border Enforcement grant program as a part of the MCSAP formula grant. Separate funding would no longer be issued for these programs. Instead, the basic and incentive calculations would be adjusted to include factors for each State based the States' previous new entrant and border enforcement programs. The section would maintain basic and incentive grant programs under MCSAP. If a border State did not include border enforcement efforts in its annual plan, funding would be adjusted accordingly. The proposal to require States to conduct safety audits of new entrant motor carriers as a condition of MCSAP funding would not extend to United States territories. However, the Secretary would be granted discretion to require participation if he or she deems it appropriate.

Congress authorized the FMCSA in section 32603(i) of MAP-21 to identify and implement processes to reduce the administrative burden on the States and the Department of Transportation concerning the application and management of grant programs. Further, the American people expect government to be more streamlined and effective with existing resources. Restructuring the MCSAP program to include the New Entrant grant and the Border Enforcement Grant programs achieves both of these important goals. States would no longer be required to prepare and submit multiple applications for closely related commercial motor vehicle safety activities. Further, it would reduce the burden on the States for post-award grant management and would eliminate the need for multiple submissions of required documents and reports (e.g., grant agreements, amendments, vouchers for reimbursement, and quarterly performance and financial reports).

FMCSA's experience has also shown that State inspectors and other safety officials routinely perform activities under each of these three grant programs in a single work day. Currently, the States have to closely monitor safety officials' time and allocate costs among multiple grant programs for reimbursement purposes. Combining the grant programs will reduce the amount of time and resources necessary for the State to voucher for reimbursement. Additionally, by reducing the number of active grants for each State, FMCSA can devote more of its grant management resources to effectiveness analysis and program improvement rather than to administrative tasks.

FMCSA's proposed MCSAP funding amounts in this request are approximately the same for the affected grant programs as the 2015 to 2018 budget control table submitted as part of FMCSA's FY 2015 budget request. FMCSA is not requesting any additional spending authority above the 2015 budget request. The MCSAP reauthorization amounts represent the sum of the 2015 budget request amounts of the individual programs that the Agency is proposing to consolidate into the MCSAP program.

Requirements for States to submit a commercial vehicle safety plan would largely remain intact. However, proposed changes would contribute to more effective enforcement and commercial motor vehicle safety.

Section 31102 would be amended to permit States to subgrant with Federally recognized Indian Tribes. This change would allow States to work with Indian Tribes to strengthen commercial motor vehicle enforcement on Indian reservations and other tribal land.

Section 31102 would be amended to allow the States to inspect vehicles transporting passengers at a location that has adequate food, shelter and sanitation facilities for passengers during the inspection. FMCSA frequently has had difficulty locating buses for inspection during compliance reviews performed at motor carriers' principal places of business, as the vehicles are often in service and not at that location. The list of authorized inspection locations in current section 31102(b)(2)(X) ("station, terminal, border crossing, maintenance facility, destination or other location where a motor carrier may make a planned stop") likewise has proven too narrow to allow enforcement officials to detect many driver and vehicle safety violations. This provision would thus significantly strengthen motorcoach enforcement without compromising the safety and comfort of passengers.

Additionally, States would be required to fully participate in the Performance and Registration Information Systems Management (PRISM) program in section 31106(b) of title 49 in order to receive full MCSAP funding. States would have 3 years from the date of enactment of this provision to fully participate. PRISM enables States to deny registration to carriers without sufficient operating authority registration. More importantly, PRISM States can suspend or revoke the registration of carriers subject to an FMCSA out of service order and seize the license plates of that carrier. Making PRISM participation a MCSAP requirement will increase State participation in this highly effective safety program.

The Agency's interdiction authority would also be expanded beyond controlled substances to include the authority to train law enforcement and take enforcement action on other criminal activity, including human trafficking involving commercial vehicles.

Finally, States would be able to use funding to conduct reviews and enforcement actions on household goods motor carriers, brokers, and freight forwarders. Currently, FMCSA is not authorized to reimburse States for these important activities that protect the American people from predatory practices.

The proposed language would allow the agency to withhold incremental amounts of MCSAP funding due to non-compliance with the requirements for participation in the program. The withheld amount would increase over three years, if the non-compliance is sustained. FMCSA finds that withholding grant funds, when necessary, is an effective statutory tool in holding recipients accountable for complying with Federal statutory requirements. However, the current requirement to withhold *all* funding is detrimental to safety because it does not allow any programs to be funded, even where a State has satisfied many of the MCSAP requirements. This proposed provision allowing the withholding of a portion of MCSAP funds would be similar to section 31314 of title 49, which requires the Secretary to withhold percentages of Federal-aid highway funds apportioned to a State that does not substantially comply with requirements of the Commercial Driver's License program. However, the Secretary would be able to restore amounts withheld from a State for substantial noncompliance with MCSAP requirements if the Secretary subsequently determines that the State has achieved compliance.

The authority of the Secretary to waive the maintenance of effort requirements would be modified and allow a waiver to extend for the period of a plan due to exceptional or uncontrollable circumstances. This change would allow the Secretary to better address unforeseen circumstances compromising a State's ability to comply with maintenance of effort requirements.

Under section 31102(e) of title 49, the Secretary is required to submit a report to Congress each year on the MCSAP program. Given the agency's modern practice of robustly and routinely making data available to the public through its website, including the information historically reported under this provision, the separate reporting requirement is redundant and unnecessary. Thus, this reporting requirement is eliminated in the revision of section 31102 of title 49 in section 5401(b) of this Act.

#### • **High Priority Program**

Section 31103 would be revised to govern the current High Priority program funded under MCSAP. The High Priority program would be expanded to permit the Secretary to not only make grants, but also enter cooperative agreements with State and local agencies and other entities. Authorized uses of High Priority funding are expanded to include improved household goods enforcement activities; local governments' enforcement of requirements related to CMV and CMV-related passenger vehicle safety; and improved hazardous materials safety and security for commercial motor vehicle transportation. Additionally, the High Priority program would be modified to provide grants and cooperative agreements for safety data improvement, as currently authorized by section 4128 of SAFETEA-LU. Section 31103 would make Federally recognized Indian Tribes eligible grantees. This change would allow Indian Tribes to participate in commercial motor vehicle enforcement on Indian reservations and other tribal land. Safety data improvement would be moved to the High Priority program because it was redundant for the Agency to have safety data quality as a National MCSAP Priority and a separate grant program for safety data quality improvement. By rolling the safety data quality improvement into the High Priority program, the FMCSA will reduce the administrative

burden on both the States and the Department of Transportation because it will no longer have two programs funding similar activities.

### • Funding Levels

Section 31104(a) proposes the funding amounts for each of the Agency's grant programs: MCSAP, High Priority, Innovative Technology, Commercial Driver's License Program Implementation, and CMV Operator Training grants. A separate funding source is identified for the CMV Operator Training grants rather than funding these grants as an Agency General Operating Expense. However, the General Operating Expense funding levels are adjusted to recognize this change.

The Federal share for all FMCSA grant awards would be changed to be at least 85%. This would decrease the State match for the Motor Carrier Safety Assistance Program (MCSAP), which is currently 20%. The current Border Enforcement and New Entrant Safety Audit grant programs require no match from the States, so the State match in support of these programs would be increased. Overall, however, the decrease for the larger MCSAP program should make this adjustment relatively easy for the States.

The State match for the Commercial Vehicle Information Systems Network (CVISN) would be decreased from 50% to not more than 15%. In addition, the Commercial Driver License Program Implementation (CDLPI) and the Commercial Motor Vehicle Operators State match would increase from 0% to a maximum of 15%. Because these changes increase the Federal share in the Agency's largest program, FMCSA believes a higher level of commercial motor vehicle safety will be achieved.

The administrative take down under section 31104 would be relabeled as "partner training and program support" to better reflect its purpose. The amount would be increased, not to exceed 1.5%, for each grant program. The increase in the partner training and program support rate and its application to all of FMCSA's individual grant programs is necessary to fund additional training opportunities for State and local partners. This section retains the requirement that 75% of these funds be directed to training. The remaining 25% could be used by the program to conduct activities that would be more efficiently completed through a central source.

The funding amounts to pay for the Agency's administrative expenses for the years 2015 to 2018 are proposed in section 31104(b).

° FY2015 – In FY2015, the requested change initiates a major expansion of our motorcoach safety oversight efforts, adding 102 additional positions to support a substantial new inspection and enforcement efforts. Additionally, \$16M is provided for FMCSA facilities, development of a customer relations database, increasing inspection staff training and augmenting Information Management spending.

° FY2016 – Over FY2015, the requested change implements the first half of CSA III, begins implementation of the Safety Fitness initiative, increases facility funds by

\$11M, increases funding for statistics and analysis, augments License and Insurance activity with direct funding, provides for the annualized staff expenses requested within FY2015, adds \$6M to Information Management, \$500,000 to Research and Technology, covers expected pay raise costs and provides inflationary increases to base Operations accounts.

° FY2017 – Over FY2016, the requested change implements the North American Borders initiative, the second half of CSA III initiative, doubles funding for the implementation of the Safety Fitness initiative, increases facility funding by \$11M, increases funding for statistics and analysis, augments License and Insurance activity with direct funding, adds \$6M to Information Management, \$500,000 to R&T, and provides inflationary increases to base Operations accounts.

° FY2018 – Over FY2017, the requested change increases funding for the implementation of the Safety Fitness initiative, reduces facility funding to a steady state of \$14M per year across all categories, increases funding for statistics and analysis, augments License and Insurance activity with direct funding, adds \$6M to Information Management, \$500,000 to Research and Technology, and provides inflationary increases to base Operations accounts.

The only proposed change to the use of funds authorized for administrative expenses would be to include authority to establish and fund a working capital fund for the purpose of financing facility-related activities, including construction, modernization, maintenance, leasing and associated activities. Currently, FMCSA leases approximately 100 facilities throughout the United States. A working capital fund is necessary because FMCSA facility-related needs vary from year-to-year, across fiscal years, and are unpredictable in terms of project-specific costs and total year-to-year funding requirements. Through the use of a working capital fund, FMCSA could ensure that it has adequate funding on hand as unanticipated expenses arise, allowing direct contributions for planned major projects by Congress and ongoing contributions from FMCSA's Operations fund to provide for minor projects and routine upkeep. This is particularly important during the next several years when a substantial portion of FMCSA's leases will expire and while permanent border facilities, in place of canopies and other temporary structures, are being established. A working capital fund would reduce FMCSA's overall demand costs for maintaining agency presence at border and other field facilities by permitting the Agency to apply savings on projects to future facility projects. Headquarters facilities expenses would not be eligible, as those are managed through the Department's existing working capital fund.

Outreach and Education set aside language, which is currently uncodified, would be codified as part of section 31104(b). Further, the Federal share of any grant made under the Outreach and Education program would be at a level of at least 85, instead of 100%, consistent with the Federal share proposed for other FMCSA grants.

SAFETEA-LU established the elements for the Outreach and Education program and no significant changes to the current program elements were made by MAP-21. However,

obsolete provisions would be eliminated because they contain reporting requirements and deadlines that FMCSA has already met.

Between 2015 and 2018, the Agency is requesting increases in program funding for inflation.

Subsection (c) would amend section 31109, establishing an Innovative Technology program.

This provision would expand and rename the current Commercial Vehicle Information Systems and Networks (CVISN) grant program authorized by sections 4101(c)(4) and 4126 of SAFETEA-LU. The new program would authorize the Secretary to provide grants to States for innovative technologies that support commercial vehicle information systems and networks.

The core and expanded funding caps applicable to the CVIS program would be eliminated. The elimination is requested because the original funding caps of \$2.5M for Core CVISN Deployment and \$1M for Expanded CVISN Deployment are out of date and do not serve the FMCSA's or States' current needs to deploy Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO). The caps were put in place under SAFETEA-LU for FY 2006 to ensure an even and uniform deployment of CVISN and ITS/CVO services across the States. Since the trucking industry includes long-haul and nationwide freight services, in 2005, FMCSA program managers wanted to use the caps to constrain the States so that CVISN core services such as the electronic screening of weigh stations and automated/e-commerce of commercial vehicle registration and fuel tax filings would be deployed nationwide rather than in regional pockets only. Now, almost ten years later, 47 States offer electronic screening for weigh station automated check and bypass. With all 50 States and the District of Columbia participating in the deployment of CVISN, the goal of uniform interstate deployment of ITS/CVO systems has been achieved. Removing the caps provides more flexibility and removes artificial constraints, limits, and delays in the deployment of innovative technologies that improve motor carrier safety operations as well as productivity.

Between 2015 and 2018, the Agency is requesting increases in program funding for inflation.

Subsection (d) would add new section 31110, codifying the Commercial Motor Vehicle Operators Grant Program. SAFETEA-LU established this program but included it as an expense in the Agency's general operating budget. As discussed above, under proposed section 31104, separate funding is identified for this program so that it remains a recurring initiative for the Agency.

Grants awarded under this program would continue to be used to train operators of CMVs in the safe use of the vehicles. Priority will be given to programs that train veterans of the US Armed Services and their spouses.

Subsection (e) would amend section 31313, governing commercial driver's license program implementation. A required set aside for emerging and high priority issues would be eliminated. Instead, the Agency would have the discretion to award grants or cooperative agreements for eligible activities.

Between 2015 and 2018, the Agency is requesting increases in program funding for inflation.

Subsection (f) would repeal section 31106(b)(4), which authorizes a separate grant program to implement the performance and registration information system management (PRISM). As addressed above, PRISM activities would be addressed under MCSAP. Funding levels associated with the PRISM grant program would be absorbed into proposed section 31104(a)(1)(A) - - the MCSAP funding authorization.

Similarly, sections 31107 and 31144(g)(5), authority for the border enforcement grant program and new entrant grant program, respectively, would be repealed and incorporated into the MCSAP, as addressed above.

Subsection (g) reflects multiple technical and conforming amendments required as a result of the proposed substantive changes discussed above.

#### **Subtitle E – Miscellaneous**

##### **SEC. 5501. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.**

Section 4144 of SAFETEA-LU established the commercial motor vehicle safety advisory committee (MCSAC) in FMCSA. This section would codify the obligation of the Secretary to maintain the MCSAC, which must be representative of various stakeholders with expertise in commercial motor vehicle matters.

##### **SEC. 5502. UNIFIED CARRIER REGISTRATION PLAN.**

This section would amend section 14504a of title 49, United States Code, to restructure and to limit the Department of Transportation's participation in the administration of the Unified Carrier Registration (UCR) Plan and Agreement. This amendment would require the UCR Plan to be operated as a not-for-profit corporation and would clarify that the UCR is not a department, agency or instrumentality of the United States Government.

This proposal would remove the requirement that a representative from the Department of Transportation be a member of the UCR board and would shift the authority to appoint new members of the board, including the authority to appoint the chairman and the vice-chairman, from the Secretary of Transportation to the existing board members. To fill the vacancy left by the representative from the Department of Transportation, the amendment requires the board to appoint a sixth board member representing the passenger transportation industry.



This section would also extend the UCR board's existing contracting authority so that it may enter into contracts with the United States Government to perform administrative functions required under the UCR agreement. This section would remove the Secretary's authority to set annual fees and would grant this authority to the board. It would also remove the Secretary's role in administering amended State plans or withdrawals from the UCR plan and grants full responsibility to the board. The amendment would retain the current Federal Advisory Committee Act exemption for the UCR in 49 U.S.C. 14504a(d)(9), and clarify that section 14504a is not subject to the Administrative Procedure Act.

The amendment would permit the board to use revenues for administrative costs prior to collecting the full amount of entitled revenues, but would mandate that the board audit the use of administrative fees once every two years. Finally, the amendments would remove the Secretary's and the Attorney General's role in enforcement.

#### **SEC. 5503. SELF-INSURANCE FOR MOTOR CARRIERS REPEALED.**

Section 13906 of title 49, United States Code, sets forth requirements for financial responsibility of motor carriers, including the filing of a bond, insurance policy or other approved security with the Secretary in specified amounts. This section would eliminate the current option for motor carriers to submit proof of qualification as a self-insurer in lieu of the bond, insurance policy or other security. This section would also repeal the requirement that the Secretary adopt regulations governing the standards for approval of a self-insurer. FMCSA has determined that the self-insurance program does not add significantly, if at all, to the safety of motor carrier transportation. In addition, administration of the self-insurance program, which benefits fewer than 50 motor carriers, is disproportionately burdensome, invites litigation and is an inefficient use of agency resources.

#### **SEC. 5504. ELECTRONIC LOGGING DEVICE RECALL AUTHORITY.**

MAP-21 requires that the Secretary adopt regulations mandating that commercial motor vehicles involved in interstate commerce that are operated by drivers subject to hours-of-service regulations and required to keep records of duty status be equipped with electronic logging devices. However, FMCSA lacks authority to directly regulate the provider of these devices. This section would provide FMCSA authority to require the recall of electronic logging devices should it be determined that an electronic logging device fails to meet certification requirements. Similar to NHTSA's authority over vehicle manufacturers, the recall authority would complement the required certification provisions under current law. This proposal also would authorize FMCSA to require an electronic logging device provider to give certain notices to device purchasers and lessees and to retain records concerning the purchasers and lessees.

#### **SEC. 5505. REPEAL OF MOTOR CARRIER FINANCIAL REPORTING REQUIREMENT.**

This section would repeal the financial reporting requirement in section 14123. The ICC Termination Act of 1995, Pub. L. 104-88, § 3, 109 Stat. 803, 893 (December 29, 1995), included a provision requiring the Secretary of Transportation to require certain classes of for-hire motor carriers to file annual financial and safety reports, and responsibility for this data is presently with FMCSA. The Agency was not provided the necessary resources to administer the data collection, however, and the financial reports are of little if any value in fulfilling the Agency's safety mission. While this statute also addresses safety reports, FMCSA has other statutory authority to collect required safety data from all regulated motor carriers. Thus, the Agency recommends that the financial reporting requirement in section 14123 be repealed.

**SEC. 5506. CONTRACTORS EXERCISING OPERATIONAL CONTROL OVER MOTOR CARRIER OPERATIONS.**

This section would provide authority for the Secretary to ensure that contractors that exercise operational control over motor carrier operations comply with FMCSA safety regulations.

**SEC. 5507. DRIVER COMPENSATION.**

Over-the-road truck drivers are often compensated by the mile, a fixed rate per load, or in some manner other than an hourly wage. Drivers are frequently detained for extended periods at shippers or receivers' facilities, during which time they are on duty but not compensated. Similarly, over-the-road motor coach drivers are often compensated in a manner other than an hourly wage and often experience extensive waiting periods while they are not driving. This situation often results in pressure for drivers to drive beyond the Federal hours of service limits, as a matter of economic necessity, risking driver fatigue and jeopardizing highway safety. Other compensation methods for drivers are available, however, and FMCSA believes that safety could be significantly increased if drivers were compensated for these waiting periods.

This section would authorize the Secretary to require property and passenger motor carriers to compensate drivers under certain circumstances for on-duty (not driving) periods at no less than the Federal minimum wage. Furthermore, it makes clear that this provision would not limit an employer's obligation to also comply with applicable provisions of the Fair Labor Standards Act (FLSA), and that the compensation required under this section shall be in addition to the compensation calculated pursuant to the FLSA.

**SEC. 5508. CIVIL ENFORCEMENT AUTHORITY.**

This section would place requests by the Secretary for the Attorney General to bring an enforcement case for violations of subchapter III of chapter 311 and chapters 313 and 315 on equal footing with requests to enforce violations of chapter 5. The basis and purpose for the original enforcement distinction between the two categories of violations was

never clear. The section would also make minor changes to bring the entirety of subchapter III of chapter 311 and chapters 313 and 315 within the scope of statutory and regulatory violations for which enforcement may be requested.

**SEC. 5509. CRIMINAL PENALTIES.**

This section would clarify that a person who knowingly violates an imminent hazard out-of-service order issued under 49 U.S.C. 521(b)(5) is subject to criminal prosecution under section 521(b)(6)(A). The section would also replace two maximum fine amounts with fines as provided in section 3571 of title 18, United States Code, and provides for the potential of one-year imprisonment for an employee convicted of specified violations under certain circumstances.

**SEC. 5510. PENALTIES FOR VIOLATIONS OF OUT-OF-SERVICE ORDERS.**

This proposal would clarify that, in applying the maximum penalty for operating in violation of an out-of-service order under 49 U.S.C. 521(b)(2)(f), each day of operation constitutes a separate offense.

**SEC. 5511. TECHNICAL CORRECTIONS.**

This section would make various technical corrections to title II of MAP-21, cited as the Commercial Motor Vehicle Safety Enhancement Act of 2012.

Subsection (a) would restore an important statutory authority frequently exercised by the Federal Motor Carrier Safety Administration (FMCSA) and its law enforcement partners to place individual motor vehicles out of service. Section 32111 of MAP-21 amended section 13902(e)(1) by removing the words "motor vehicle" and adding the words "motor carrier", giving the Agency authority to place a motor carrier out of service for operating without registration. The unintended consequence of this change, however, was removal of what had been FMCSA's clear authority to place individual vehicles out of service. The technical correction of this subsection would restore the authority of the Agency and its law enforcement partners to place motor vehicles out of service while maintaining the MAP-21 changes to place motor carriers out of service for operating without required registration.

Subsection (b) would clarify the Agency's settlement authority for general civil penalties. Section 32923 of MAP-21 added a new subsection to 14901 to expressly authorize the Secretary to structure settlements of civil penalties by accepting lesser amounts of money, suspension of penalties, payment of penalties over time or investment in training or other activities or equipment to improve regulatory compliance. Such strategies are additional tools that can be used to improve motor carrier safety and compliance with applicable rules, to promote the public interest and to respond with enforcement flexibility as justice requires. However, MAP-21 codified the subsection header as "Settlement of Household Goods Civil Penalties" even though the authority does not apply specifically to household goods carriers. The Agency is proposing to strike

"Household Goods" from the subsection header to clarify this settlement authority applies to all penalties applied under section 14901.

Subsection (c) would correct an erroneous reference to the civil penalty authority of the National Highway Traffic Safety Administration (NHTSA). Section 32301(c) of MAP-21 amended section 30165(a)(1) to add a civil penalty for violations of the electronic logging devices requirements under section 31137. However, section 30165 pertains to NHTSA's civil penalty authority whereas the provisions under section 31137 are administered by FMCSA. FMCSA has adequate authority under 49 U.S.C. 521(b) to address violations of regulations adopted under section 31137. The amendment to section 30165 was therefore not necessary and should be reversed.

Subsection (d) would make consistent the reporting requirements of 49 U.S.C. 31149(c)(1)(E) (as codified by section 32302 of MAP-21) with similar reporting requirements under MAP-21, including the electronic filing requirements for medical examination certificates under 49 U.S.C. 31311(a)(25) (as amended by section 32302(d) of MAP-21) and the reporting requirements under the National clearinghouse for controlled substances and alcohol test results of commercial motor vehicle operators under 49 U.S.C. 31306a (as provided by section 32402 of MAP-21). Further, this change would make the provision consistent with Congress's stated objective of "moderniz[ing] commercial driver's license (CDL) information systems," as a key element of modernization is timely reporting of data. (Conf. Rept. 112-557, at 608 (2012)).

Subsection (e) would clarify the cross reference for the Agency's authority to impose civil and criminal penalties under specified provisions of 49 U.S.C. § 521, as well as any other applicable civil penalties relating to alcohol and drug testing. This subsection would also insert "service agent" into the subsection heading to make it consistent with the provision.

Subsection (f) would make a change to the definition of "covered farm vehicle." Section 32934(c)(1)(B)(i) and (ii) define a covered vehicle (in part) by reference to a weight of 26,001 pounds. However, that threshold should be changed to 26,000 pounds to make it consistent with the definition of commercial motor vehicle in section 31301(4) and to save confusion in the enforcement community.

Subsection (g) would amend the National Driver Register access provisions to recognize that the Administrator of the Federal Motor Carrier Safety Administration, rather than the Administrator of the Federal Highway Administration (FHWA), requires access for accident investigations. The current statutory text predates the establishment of the FMCSA by the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Prior to that time, the functions of FMCSA that dealt with crash investigations were part of the Office of Motor Carriers in FHWA. MCSIA made clear that any statutory reference pertaining to the former Office of Motor Carriers in FHWA is deemed to refer to the FMCSA. Section 4110 corrects the reference in 49 U.S.C. 30305(b)(1) accordingly.

**SEC. 5512. AUDITS AND COMPLIANCE INVESTIGATIONS OF MEXICO-DOMICILED MOTOR CARRIERS.**

This section would remove the requirement that certain audits and compliance investigations of Mexico-domiciled motor carriers that have applied for long-haul operating authority be conducted on-site in Mexico. This change reflects the need for the Agency to have flexibility in where audits and investigations are conducted and better coordinate with Department of State travel warnings and alerts for the safety and security of Agency personnel.

**SEC. 5513. ADMINISTRATIVE ADJUDICATION OF VIOLATIONS OF COMMERCIAL REGULATIONS AND STATUTES.**

This section would clarify the authority of the Secretary of Transportation to enforce commercial regulations adopted under part B of subtitle IV, title 49, through an administrative adjudication process, in addition to proceeding with a civil action in the Federal courts. The Agency and its predecessor promulgated final rules on administrative adjudication of commercial violations over a decade ago, and current authority for those rules includes sections 13103, 13301(a), and 14701 of title 49. Notwithstanding the Agency's long, consistent interpretation of its authority in this area, questions have arisen regarding the Agency's authority to enforce its commercial regulations through an administrative process. The Agency therefore seeks congressional clarification in this area. Such clarifying legislation is not unprecedented. In enacting the Motor Carrier Safety Improvement Act of 1999, for example, Congress clarified the authority of the Inspector General of the Department of Transportation to take certain actions. Pub. L. No. 106-159, sec. 228, 113 Stat. 1748, 1773 (December 9, 1999).

**SEC. 5514. ACCESS TO NATIONAL DRIVER REGISTER.**

This section would amend the National Driver Register statute to expand the Federal Motor Carrier Safety Administrator's right to access the motor vehicle driving record of any individual in connection with a safety investigation under the Administrator's jurisdiction.

**SEC. 5515. ELIMINATION OF CERTAIN FMCSA REPORTING REQUIREMENTS.**

This section would eliminate two FMCSA reporting requirements that have become obsolete.

**TITLE VI--HAZARDOUS MATERIAL TRANSPORTATION SAFETY**

**SEC. 6001. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

This section would provide that, whenever in this title, an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

#### **SEC. 6002. EMERGENCY OPERATIONAL CONTROLS.**

This section would add a new section 5129 to make explicit that the Secretary has the authority to order operation controls, restrictions and prohibitions. If upon investigation, testing, or research, the Secretary determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, or activity existing within a regulated entity or industry, related to the transportation of hazardous materials in commerce, causes an emergency situation involving a threat to life, personal injury, or harm to property or the environment, the Secretary (in addition to other available enforcement options) immediately may order such operational controls, restrictions, and prohibitions, without prior notice or an opportunity for a hearing, as may be necessary to abate the situation. The order shall be in writing and describe the condition, practice, or activity that is causing the emergency situation; the imposed operational controls, restrictions, and/or prohibitions, and may include an emergency variance from the hazmat law or regulations; and the standards and procedures for obtaining relief from the order. The provision also provides an opportunity for review of the order.

#### **SEC. 6003. ENHANCED REGISTRATION REQUIREMENTS.**

Section 5108 would be amended to expand the registration requirements to a person who performs, or is responsible for performing a regulated function and is also subject to the hazmat training requirements.

#### **SEC. 6004. USER FEES FOR SPECIAL PERMITS.**

Section 5117 would be amended to grant the Secretary the authority to establish a "Hazardous Materials Approvals and Permits Fund" and collect a reasonable fee for the administration of the special permits and approvals program.

#### **SEC. 6005. NATIONAL EMERGENCY AND DISASTER RESPONSE.**

This proposal includes amendments to two sections which would grant the Secretary authority to facilitate the movement of hazardous materials during federally declared disaster and emergency areas. Section 5101 would be amended to include among its purposes the safe movement of hazardous materials during national emergencies. Additionally, section 5103 would be amended to grant the Secretary the authority to prescribe standards to facilitate the movement of hazardous materials into, from and within federally declared disaster and emergency areas.

#### **SEC. 6006. ENHANCED REPORTING.**

This section would amend section 5121 and the current reporting requirement for the biennial report on the transportation of hazardous materials. The amendment would change the requirement to "make public" the report rather than transmitting it to Congress, as is currently required.

#### **SEC. 6007. IMPROVING PUBLICATION OF SPECIAL PERMITS.**

This section amends section 5117 and the current notification requirements for special permits. The amendment would eliminate the requirement for publication of the notice in the Federal Register.

#### **SEC. 6008. HAZARD ABATEMENT AUTHORITY.**

This section would add a new section 5130 granting the Secretary the authority to order removal, remediation, or disposal of hazardous materials. This authority would address an increasingly growing problem that arises when a non-compliant shipment of hazardous materials is abandoned in transportation. DOT's current authority does not provide the necessary tools to adequately address this problem. This section would provide that if, upon inspection, investigation, testing, or research, the Secretary determines that an unsafe condition, practice, or activity, related to the transportation of hazardous materials in commerce or other items subject to this chapter, causes unreasonable risk of death, personal injury, or significant harm to the property or the environment, the Secretary may order removal, remediation, or disposal of such hazardous materials or other items subject to the hazmat law, as may be necessary to abate the unreasonable risk. The order shall be in writing and describe the condition, practice, or activity that is causing the unreasonable risk; the actions that must be taken to abate the unreasonable risk; and the standards and procedures for obtaining relief from the order. If a person fails to comply with the order, the Secretary may take steps to abate the unreasonable risk, and the person that failed to comply with the order, shall be liable for all costs incurred. EPA and DOT have joint responsibility for regulating the transportation of hazardous wastes, and each agency's regulations in this area are inter-related. As such, DOT expects that an order for removal, remediation, or disposal issued pursuant to this authority would subject the responsible party to all applicable EPA and DOT requirements for transporting and disposing of the material.

#### **SEC. 6009. INSPECTION OF NON-DOMESTIC ENTITIES.**

Section 5121 would be amended to grant the Secretary inspection and investigation authority over non-domestic entities. In instances when a person seeks to manufacture, requalify, or inspect a DOT specification packaging or special permit cylinders or certify compliance with the 49 CFR outside the United States, that person must seek an approval from the Secretary to perform that function outside the United States. Upon the request of the Secretary, the applicant must allow the Secretary or the Secretary's designee to inspect the applicant's process and procedures. The applicant must bear the cost of the initial and subsequent inspections.

## **SEC. 6010. IMPROVING THE EFFECTIVENESS OF THE HMEP GRANT PROGRAM.**

This proposal includes amendments to two sections in order to improve the effectiveness of the grant program. Grants would be removed from section 5107 and rolled into section 5116. Further, section 5116 would be amended to grant the Secretary the authority to make grants to States and Indian tribes to develop, improve, and carry out emergency plans; to decide on the need for a regional hazmat emergency response team; and to train public sector employees to respond to accidents and incidents involving hazmat. The Secretary may make a grant only if the State or Indian tribe certifies expenditure levels and that the training provided under the grant consists of acceptable course materials. A State or Indian Tribe must ensure appropriate coordination with adjacent States and Indian tribes. The section contemplates uses for a training grant under this section. The Secretary shall allocate amounts made available for grants based on the needs of the States and Indian tribes for emergency response training. The Secretary shall consider six identified decision criteria. The Secretary may make a grant to a State only if the State certifies that it complies with emergency planning and community right-to-know. A State or Indian tribe interested in receiving a grant under this section must submit an application. Federal monitoring and technical assistance may be provided to States and Indian tribes as appropriate. To minimize administrative costs and to coordinate Federal financial assistance for emergency response training and planning, the Secretary may delegate authority to receive and review applications and other ministerial duties. The Secretary of the Treasury shall establish an account in the Treasury (Hazardous Materials Emergency Preparedness Fund). Amounts from this fund may be used to make grants under this section; monitor and provide technical assistance; publish and distribute an emergency response guide; modernize hazmat communications, data management, and information technology; and pay administrative costs. The Secretary shall make grants for training hazmat instructors. An emergency responder training grant shall be made through a competitive process to a non-profit organization that has demonstrated expertise in conducting a training program for hazmat emergency responders; can reach a target population of hazmat emergency responders; agrees to use an approved course; provides compliant training courses on a nondiscriminatory basis; and ensures that trainees are competent to respond to accidents and incidents involving the transportation of hazmat. A hazardous materials employee training grant shall be made through a competitive process to a non-profit organization that demonstrates expertise in providing training, research, technological development, or a similar service intended to enhance the capabilities of hazmat employees. The Secretary shall ensure that maintenance-of-way employees and railroad signalmen receive general awareness and familiarization training. No grant shall supplant or replace existing employer-provided hazmat training efforts or obligations and funds granted to an organization shall only be used to provide training for instructors to conduct hazmat and hazmat response training programs; purchase training equipment; and disseminate necessary training information and materials. The Secretary may impose additional terms and conditions as deemed necessary. The Secretary shall submit an annual report to Congress.



**SEC. 6011. CIVIL PENALTY.**

This section would amend section 5123 to increase the maximum civil penalty amount from \$75,000 to \$250,000; or for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property, from \$175,000 to \$500,000.

**SEC. 6012. GENERAL DUTY.**

This section would amend section 5103 to add a general duty requirement for the safe transportation of a hazardous material. A person shall take all reasonable measures and precautions to properly classify, describe, package, mark and label, and ensure proper condition for transportation of a hazardous material, as well as comply with Federal hazmat law and regulations.

**SEC. 6013. AUTHORIZATION OF APPROPRIATIONS.**

This section reflects authorization request levels for fiscal years 2015 through 2018 to carry out Chapter 51 of title 49.

**SEC. 6014. ELIMINATION OF CERTAIN PHMSA REPORTING REQUIREMENTS.**

This section would eliminate a report required under section 6 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426) which requires the Secretary to report to Congress every 180 days on open safety mandates required under the section. There have been no changes to the status of the two open mandates during the last several report cycles and the report has become unnecessary and obsolete.

**TITLE VII--AMENDMENTS TO THE INTERNAL REVENUE CODE**

**SEC. 7001. AMENDMENT OF 1986 CODE.**

This section would establish that, except as expressly provided, all references to amendments in this title are amendments to the Internal Revenue Code of 1986.

**SEC. 7002. EXTENSION OF HIGHWAY-RELATED TAXES.**

Subsection (a) would extend through September 30, 2020 the imposition of excise taxes currently dedicated to the Highway Trust Fund. The extension would be at the current rates for taxes on fuel (gasoline, diesel fuel, and a variety of other fuels) and taxes on the use of heavy vehicles, the retail sale of heavy trucks and trailers, and truck tires.

Subsection (b) would extend without change exemptions from the highway taxes that would otherwise expire.

**SEC. 7003. EXTENSION OF PROVISIONS RELATED TO THE SPORT FISH RESTORATION AND BOATING TRUST FUND.**

Subsection (a) would extend the authority to make expenditures from the Sport Fish Restoration and Boating Trust Fund through September 30, 2018. This period is consistent with the years for which the Act authorizes funds for surface transportation programs. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Trust Fund.

**SEC. 7004. TRANSPORTATION TRUST FUND.**

This section would replace section 9503 of the IRC.

Subsection (a) of section 9503 would establish a new Transportation Trust Fund (TTF) as a successor to the Highway Trust Fund.

Subsection (b) of section 9503 would provide for the appropriation of the proceeds of certain taxes and penalties to the TTF. The taxes transferred are the same taxes currently dedicated to the Highway Trust Fund plus General Fund transfers equal to the 10-year revenue raised from business tax reform as specified in subsection (h) of section 9503 of the IRC, as added by this section. Taxes would be deposited in the TTF for liabilities incurred through FY 2020. The subsection also provides for the continued appropriation of certain IRS penalties related to the fuel tax to the TTF.

Subsection (c) of section 9503 would provide for the payment of floor stock refunds from the TTF as provided in section 6412 of the IRC. These refunds would be triggered if the highway taxes were allowed to expire (or in the case of some fuel taxes, would be reduced to a minimal level).

Subsection (d) of section 9503 would extend transferring the proceeds from taxes on fuel used in motorboats and small engines to the Sport Fish Restoration and Boating Trust Fund through September 30, 2020. It would also continue the requirement for \$1 million per year of such taxes to be further transferred to the Land and Water Conservation Fund. It would continue the transfer of taxes on fuel initially taxed at the highway rate, but later found to have been used in aviation, to the Airport and Airway Trust Fund.

Subsection (e) of section 9503 would establish the Mass Transit Account of the TTF. The language is substantially the same as the current Mass Transit Account language. The transfer of tax receipts provided in current law would continue with the Mass Transit Account receiving the same portions of the highway fuel taxes. The Mass Transit Account would also receive General Fund transfers of a portion of the 10-year revenue from business tax reform as specified in subsection (h)(1)(B). The authority to make expenditures would be extended through September 30, 2018. Continued expenditures

after that date, except to pay prior obligations, would trigger the cessation of transfers to the Mass Transit Account.

Subsection (f) of section 9503 would establish the Highway Account of the TTF. The transfer of tax receipts provided in current law would continue with the Highway Account receiving the same portions of the highway fuel taxes plus the proceeds of the nonfuel highway taxes, certain IRS penalties, and motor carrier fines and penalties. The Highway Account would also receive General Fund transfers of a portion of the 10-year revenue from business tax reform as specified in subsection (h)(1)(A). The authority to make expenditures would be extended through September 30, 2018. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Highway Account.

Subsection (g) of section 9503 would establish the Rail Account of the TTF. The Rail Account would also receive General Fund transfers of a portion of the 10-year revenue from business tax reform as specified in subsection (h)(1)(C). The authority to make expenditures would be through September 30, 2018. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Rail Account.

Subsection (h) would appropriate additional revenues from the General Fund to be transferred to each account in the TTF to supplement the receipts from highway taxes and penalties. The taxes transferred are the same taxes currently dedicated to the Highway Trust Fund plus General Fund transfers equal to the 10-year revenue raised from ~~of~~ business tax reform.

Subsection (i) of section 9503 would continue the solvency test commonly referred to as the Byrd Test or Byrd Amendment. The test would be continued as in current law for the Highway and for the Mass Transit Account. The test would compare outstanding authorization (unobligated balances and unpaid obligations) to the cash on hand and the projected receipts to the Account for the next 48-month period. If the test is triggered, apportionments from the triggering Account must be reduced until the test is no longer triggered. Withheld funds would be restored when the Account balance and future receipts can accommodate the restoration without triggering the Test. The subsection continues the existing quarterly calculation and reporting requirements.

Subsection (j) would establish the Multimodal Account of the TTF. The Multimodal Account would also receive General Fund transfers of a portion of the 10-year revenue from business tax reform as specified in subsection (h)(1)(D). The authority to make expenditures would be through September 30, 2018. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Multimodal Account.

Subsection (b) includes conforming amendments.

#### **SEC. 7005. EFFECTIVE DATE.**

Section 7005 would make the amendments made by Title VII effective upon enactment.

## **TITLE VIII--RESEARCH**

### Subtitle A--Funding

#### **SEC. 8001. AUTHORIZATION OF APPROPRIATIONS.**

Subsection (a) of this section would authorize sums out of the Highway Account of the Transportation Trust Fund for the highway research and development program, technology and innovation deployment program, training and education, intelligent transportation systems program, university transportation centers, and bureau of transportation statistics.

Subsection (b) of this section would provide that funds authorized for these programs shall be treated as if they were apportioned under chapter 1 of title 23, United States Code, except that this section would provide for an 80 percent Federal share unless otherwise expressly provided. Funds authorized under this section would remain available until expended and would not be transferable.

### Subtitle B--Research, Technology, and Education

#### **SEC. 8101. NATIONAL COOPERATIVE FREIGHT TRANSPORTATION RESEARCH PROGRAM.**

Subsection (a) would reestablish the National Cooperative Freight Research Program (NCFRP) that was repealed by MAP-21, in support of Departmental freight planning and programming goals. Different from the SAFETEA-LU NCFRP program, this proposal would include a specific focus on hazardous materials transportation, and a requirement for coordination with the National Freight Strategic Plan and the USDOT Research and Development Strategic Plan.

Subsection (b) would authorize to be appropriated such sums as may be necessary to carry out this Program.

Subsection (c) would include a conforming amendment.

#### **SEC. 8102. COMPETITIVE UNIVERSITY TRANSPORTATION CENTERS CONSORTIA PROGRAM.**

Subsection (a) would make minor technical amendments to emphasize the existing multimodal and multidisciplinary aspects of the Program; maximize research results by requiring that all UTCs be consortia (i.e., no single university UTCs); clarify awards terms; reflect the elevation of the former Research and Innovative Technology Administration (RITA) into OST/R by the Consolidated Appropriations Act, 2014;

reflect that there are no longer any Federal Transit Administration (FTA) funds directed to the UTC Program; and adjust grant award values.

Subsection (a)(5)(c)(2) would emphasize "consideration for minority institutions" in all UTC grants, not only Tier 1 UTCs (as in MAP-21).

Subsections (a) and (b) would enable broader multidisciplinary and multimodal research, and would enable more funding to enter into university research, by: allowing State DOTs to provide matching fund from all Federal-aid sources (not limited to 23 U.S.C. 503/504, as in MAP-21); allowing DOT Operating Administrations to provide matching funds for UTC grants; allowing other Federal funding sources to provide matching funds for UTC grants; and enabling DOT Operating Administrations and other Federal agencies with interests in transportation to sponsor additional grants under the UTC Program, within specific restrictions.

### **SEC. 8103. PRIORITY MULTIMODAL RESEARCH PROGRAM.**

Subsection (a) would create a "Priority Multimodal Research Program" to enable OST/R participation in Administration initiatives on behalf of DOT. There are several ongoing Administration initiatives in which DOT participation is sought.

Subsection (b) would authorize to be appropriated such sums as may be necessary to carry out this Program.

Subsection (c) would include a conforming amendment.

### **SEC. 8104. BUREAU OF TRANSPORTATION STATISTICS.**

Subsection (a) would make minor technical corrections; amend the existing authorities of the Bureau of Transportation Statistics (BTS) to reflect the elevation of the former RITA into OST/R by the Consolidated Appropriations Act, 2014; and formally establish the "Value of Transportation" Initiative.

Subsection (b) would authorize an Intermodal Transportation Data program, a research program that would provide content for the Intermodal Transportation Database. The Intermodal Transportation Data program is a critical source of benchmark information for national policy development and for State and metropolitan transportation planning, and provides key additional data against which performance measures collected under Title 1 are applied to determine how much transportation activity is affected. The Intermodal Transportation Data program develops surveys, data collections, and analytical tools. It differs from the proposed FHWA Performance Management Data Support program in that the BTS program would be focused on use and value of the transportation system while the FHWA program would measure performance in direct support to implementation of the Federal-aid highway program.

Subsection (e) would restore BTS's ability to fine organizations that fail to respond to the vehicle inventory and use survey. Section 52011 of MAP-21 limited that authority so that BTS could only fine entities receiving Federal freight funds. That restriction diminished data quality because it prevented BTS from surveying an appropriate sample of the freight industry.

Subsection (f) would provide clear authority for the National Transportation Library to also serve as the DOT central library, with physical facilities and public accessibility requirements; and reflects the elevation of the former RITA into OST/R by the Consolidated Appropriations Act, 2014.

Subsection (g) would authorize a port performance statistics program within the Bureau of Transportation Statistics to provide nationally consistent statistics on capacity and throughput for all maritime ports to assess performance for freight transportation planning and investment analysis; and require advice from major stakeholders who collect and use port information.

#### **SEC. 8105. ITS GOALS AND PURPOSES.**

Subsection (a) would amend the existing goals of the ITS Research Program to remove an outdated reference to "national defense mobility."

Subsection (b) would add an ITS freight research, demonstration and applications focus to the ITS Program goals, in support of Departmental freight planning and programming goals.

#### **SEC. 8106. ITS GENERAL AUTHORITIES AND REQUIREMENTS.**

This section would amend the due date of the annual Report to Congress on the recommendations of the ITS Advisory Committee to reflect the current cycle of Advisory Board meetings. Also, instead of transmitting a paper report to Congress, the requirement would be revised to require that the report be made available to the public on a Department public website.

#### **SEC. 8107. ITS NATIONAL ARCHITECTURE AND STANDARDS.**

Subsection (a) would clarify the membership of ITS standards development organizations.

Subsection (b) would remove a reference to "user fee collection," and clarify that establishing/requiring use of a standard requires conformance with the requirements of the Administrative Procedure Act.

#### **SEC. 8108. VEHICLE-TO-VEHICLE AND VEHICLE-TO-INFRASTRUCTURE COMMUNICATIONS SYSTEMS DEPLOYMENT.**

This section would correct a typographical error in section 518(a) of title 23, United States Code, by inserting "a report" in the current text before "House of Representatives." However, instead of transmitting a paper report to Congress, the requirement would be revised to require that the report be made available to the public on a Department public website.

#### **SEC. 8109. INFRASTRUCTURE DEVELOPMENT.**

Subsection (a) would reestablish a previous (SAFETEA-LU) restriction on the use of ITS research funding for construction projects. This restriction was removed by MAP-21.

Subsection (b) includes a conforming amendment.

#### **SEC. 8110. DEPARTMENTAL RESEARCH PROGRAMS; CONFORMING AMENDMENTS.**

This section consists of conforming amendments to execute on the face of title 49 (Transportation) and title 5 (Government Organization and Employees) statutory changes that realigned research and related program responsibilities within the Department of Transportation. These changes appear as provisos in Public Law 113-76 (January 17, 2014) under the Head "Title I - Department of Transportation -- Office of the Secretary -- Research and Technology" in Division L of the Act. With three exceptions addressed below, this section would amend title 49 and title 5 to reflect the language of the provisos without making substantive change in current law.

Two exceptions (subsections (b)(1) and (b)(4)) would amend sections 5313 and 5316 of title 5 to eliminate two unused positions within the Department: the Under Secretary for Transportation Security and the Associate Deputy Secretary, Department of Transportation. The third exception extends existing authority in current section 112 of title 49, United States Code, (that would otherwise lapse at the end of fiscal year 2014) through 2018.

Specifically, subsection (a)(1) would amend section 102(e)(1) of title 49 by (1) increasing the number of Assistant Secretaries in the Department from 5 to 6, and by listing the newly created position of "Assistant Secretary for Research and Technology" in subsection (e)(1)(A).

Subsection (a)(2) would amend Chapter 1 of title 49 to strike section 112, which establishes the Research and Innovative Technology Administration that is eliminated by the relevant provisos of P.L. 113-76.

Subsection (a)(3) would amend section 330 of title 49 to reserve to the Secretary specific duties and additional authorities formerly given the Administrator, Research and Innovative Technology Administration, under the now-deleted section 112 of title 49.

Subsection (a)(5) would amend section 6302(a) of title 49 to reflect the fact that the Bureau of Transportation Statistics is no longer an element of the Research and Technology Administration.

Subsection (b)(1) would amend section 5313 of title 5 to eliminate, as noted above, an unused "Under Secretary of Transportation for Security" position that has been un-filled since the Transportation and Security Administration transferred from the Department to the Department of Homeland Security in 2003.

Subsection (b)(2) would amend section 5314 of title 5 to delete the position of "Administrator, Research and Innovative Technology Administration" from the Department because the Administration has been eliminated.

Subsection (b)(3) would amend section 5315 of title 5 to increase by one the number of Assistant Secretaries in the Department to reflect the addition of the Assistant Secretary for Research and Technology.

Subsection (b)(4) would amend section 5316 of title 5 to eliminate, as noted above, the position of "Associate Deputy Secretary, Department of Transportation." that was removed from the Department of Transportation organizational structure in 2002 (Pub. L. 107–295, sec. 215(c)).

Subsection (c) is a conforming amendment to reflect the modified section heading for 49 U.S.C. 330 in the chapter 3 analysis.

#### **SEC. 8111. OFFICE OF INTERMODALISM.**

Subsection (a) would repeal outdated language related to the Office of Intermodalism at 49 U.S.C. 5503.

Subsection (b) would include a conforming amendment.

#### **SEC. 8112. COOPERATION WITH FEDERAL AND STATE AGENCIES AND FOREIGN COUNTRIES.**

This provision would amend sections 308(a) and 502(b)(3)(C) of title 23, United States Code to allow the Secretary to cooperate with stakeholders, including "international entities." This amendment would allow the Secretary to carry out international highway transportation outreach programs and to accept funds from cooperating entities. These funds would be used as payment for services, such as training and engineering services, related to highway planning, development, construction, maintenance, and improvement. Cooperating international entities include: Forum of European National Highway Research Laboratories, Organization for Economic Co-operation and Development, European Commission, Inter-American Development Bank, World Road Association, and the World Bank.



If the Secretary had authority to accept funds from all cooperating international entities, it would streamline the process of receiving aid from international entities that are paying the Secretary to provide services authorized by sections 308(a) and 502(b)(3)(C) in a foreign country.

Accepting funds from cooperating international entities would also allow the Secretary to leverage partnerships with other organizations. There are foreign transportation markets with interest in U.S. expertise and technology. Without the ability to accept funding from these foreign transportation markets, the Secretary will likely forego opportunities with foreign entities that would adopt U.S. practices. The Secretary would also not be able to engage in multi-national initiatives that could affect several countries simultaneously.

This provision would amend section 502(b)(5)(B) to allow the Secretary to use research funds to promote U.S. products internationally. Using research funds to promote U.S. products internationally will allow U.S. companies to promote their standards abroad. In exporting these U.S. standards, the Secretary would be exchanging information, technologies, and best practices with international counterparts. Therefore, promotion of U.S. products internationally would help create opportunities for the U.S. private sector to grow abroad. Without this explicit authorization, the Secretary would have less flexibility to support U.S. private sector interests in accessing overseas transportation markets.

This provision would further amend section 502(b)(5)(B) to allow the Secretary to work with foreign countries on the delivery of advice and technical assistance. This provision would allow the Secretary to conduct needs and assessment studies and provide assistance to countries developing their infrastructure.

The studies would analyze foreign countries' needs and priorities to assess our ability to offer recommendations for improvements, either through work that the Department of Transportation could undertake directly on a reimbursable basis or through referrals to competent segments of the U.S. private sector. The Secretary's ability to provide assistance to developing countries will not only provide for fiscal growth in the U.S. private sector, but will also solidify our reputation with global entities.

## **TITLE IX--RAIL SAFETY, RELIABILITY, AND EFFICIENCY**

### **SEC. 9001. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.**

This section would provide that the title may be cited as the "Rail for America Act". It also would provide that, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

#### **Subtitle A--National High-Performance Rail System**

## **SEC. 9101. PURPOSE AND OBJECTIVES.**

This section would provide that the purpose of Subtitle A is to promote and facilitate the development of the National High-Performance Rail System, a comprehensive national network of integrated passenger and freight rail services, and to authorize funds for the planning, development, construction, and implementation of rail corridors and related infrastructure improvements.

## **SEC. 9102. GRANT PROGRAMS.**

This section would amend 49 U.S.C. subtitle V, part C by inserting new chapter 246 immediately after chapter 244. The new chapter would contain the sections summarized below.

*Section 24601 -- "Definitions" --* provides for definitions of key terms used in the chapter.

*Section 24602 -- "Authorization of appropriations" --* authorizes certain appropriations and provides contract authority, available from the Rail Account of the Transportation Trust Fund, to carry out the Current Passenger Rail Service program, and the Rail Service Improvement program. This structure will put rail on par with other transportation modes, most of which receive funding from a dedicated Trust Fund. This structure will ensure a predictable and sustainable revenue stream for investment in the Nation's rail network, thus allowing for more efficient development of longer-term projects and providing the National Railroad Passenger Corporation (Amtrak) with improved ability to make multi-year investment decisions.

*Section 24603 -- "National High-Performance Passenger Rail System" --* provides that the National High-Performance Rail System includes the following financial assistance programs: Current Passenger Rail Service Program; Rail Service Improvement Program; and Railroad Rehabilitation and Improvement Financing Program. These investment programs consolidate, replace, or restructure all previous rail investment programs, including Amtrak grant programs, the High-Speed and Intercity Passenger Rail (HSIPR) program, and the Rail Line Relocation program. The proposed program structure is streamlined, simplified, less duplicative, and more transparent than existing rail programs.

*Section 24604 -- "Current Passenger Rail Service Program" --* provides that the Secretary shall establish a Current Passenger Rail Service Program that shall ensure that existing passenger rail assets and services are maintained in reliable working condition. This program would replace existing Amtrak capital and operating grant programs with new grant programs oriented around passenger rail "business lines." The Current Passenger Rail Service Program consists of the following programs: Northeast Corridor; State Corridors; Long-Distance Routes; National Assets, Legacy Debt, and Amtrak Positive Train Control; and Stations-Americans with Disabilities Act Compliance. Orienting Federal support for existing passenger rail services by business lines increases transparency and accountability, while also providing Amtrak and other passenger rail

providers with the necessary flexibility to make the business decisions that will most effectively deliver each of these services.

- The objective of the Northeast Corridor (NEC) program is to bring NEC infrastructure and equipment into a state-of-good repair, and to ensure that those assets are then maintained in a state-of-good repair, so that the NEC can continue providing travelers with a safe, reliable, and efficient travel option in the congested Northeast region. This program also requires that all operating surpluses generated on the NEC be redirected back into the capital requirements for the NEC, rather than offsetting operating losses in other business lines.
- The objective of the State Corridors program is to enable the successful implementation of section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (Division B of Public Law 110-432) for existing State-supported passenger rail operations through transitional financial assistance to States. Section 209 of PRIIA will require 19 States to begin paying approximately \$100 million more than they currently pay for State-supported train services, starting in fiscal year (FY) 2014. This program will phase in this cost increase to the States over a transitional period to ensure these services continue. These costs were previously covered by Federal grants to Amtrak, and thus this program does not result in a net increase of Federal support for these services.
- The objective of the Long-Distance Routes program is to provide grants to Amtrak for the continuation of services on long-distance routes.
- The objective of the National Assets, Legacy Debt, and Amtrak Positive Train Control Program is to provide grants to Amtrak for the operating and capital needs associated with the nation's core rail assets; for bringing all stations served by Amtrak into compliance with the Americans with Disabilities Act; for servicing Amtrak's legacy debt; and for implementing positive train control on Amtrak routes where Amtrak is fully or partially responsible for compliance with 49 U.S.C. 20157 (regarding implementation of positive train control (PTC) systems). This section also describes the eligible recipients, eligible operating activities and capital projects, and Federal share for each of these programs.
- The objective of the Stations-Americans with Disabilities Act Compliance Program is to bring all stations served by Amtrak into compliance with the Americans with Disabilities Act.

*Section 24605 -- "Rail Service Improvement Program"* -- provides that the Secretary of Transportation (Secretary) shall establish a Rail Service Improvement Program that shall promote and facilitate development of new passenger rail corridors, improvements to existing passenger rail corridors, and enhancement of freight corridors and connection points. The purpose of this program is to ensure that the Nation's rail network is prepared to serve the intercity travel needs of a growing population through cost-effective, market-based investments in passenger and freight rail improvement projects. The Rail Service Improvement Program consists of the following programs: Passenger Corridors; Commuter Railroads-Positive Train Control Compliance; Local Rail Facilities and Safety; and Planning.

- The objective of the Passenger Corridors program is to build regional networks of passenger rail corridors through construction of new corridors or substantial improvements to existing corridors, and to mitigate passenger train congestion at critical rail chokepoints. This program will help advance the President's goal of connecting 80 percent of Americans to high-performance rail.
- The objective of the Commuter Railroads-Positive Train Control Compliance program is promote rail safety by assisting in funding the implementation of positive train control on commuter railroad-owned infrastructure, equipment, and back office systems.
- The objective of the Local Rail Facilities and Safety program is to mitigate the impacts of railroad operations in local communities, through improvements to highway-rail grade crossings, upgrades to short-line railroad infrastructure, rail line relocation and improvement projects, and training and technical assistance to local governments. These investments will help ensure that freight rail's market share -- particularly for the movement of high-value intermodal goods -- continues to grow, thus resulting in economic, environmental, safety, and transportation benefits. The program would be able to use its funding to pay the subsidy and administrative cost of some RRIF loans, in addition to providing grants.
- The objective of the Planning program is to facilitate the development of comprehensive plans to guide future investments in the nation's rail systems, and to develop the workforce necessary to advance America's rail industry. Sound planning is absolutely essential to ensuring that future investments are based on a detailed understanding of market needs and opportunities.

*Section 24606 -- "Oversight"* -- provides oversight authority for the Current Passenger Rail Service Program and the Rail Service Improvement Program to ensure that taxpayer funds are appropriately invested and managed. This section further provides that the Secretary shall develop and implement procedures for evaluating the implementation of projects and assessing the extent to which these projects achieved intended outcomes and public benefits. This section also provides that a recipient of Federal funding under this chapter must prepare and carry out certain project delivery documentation.

*Section 24607 -- "Financial assistance provisions"* -- provides that certain grant conditions attached to funding under the Intercity Passenger Rail Service Corridor Capital Assistance program established in section 301 of PRIIA, are also attached to the funding under this section, including conditions concerning when entities are considered "rail carriers", prevailing wage requirements, employee protections, liability requirements, and the replacement of existing intercity passenger rail service. This Act elsewhere makes several revisions to these same conditions (see sections 9104 and 9207 of the bill). Also, subsection (b) authorizes the Secretary to establish standards under which a contract for construction may be advertised that contains local hiring requirements in some limited circumstances.

### **SEC. 9103. AMTRAK 5-YEAR BUSINESS PLANNING.**

This section would provide a process by which Amtrak will prepare and submit five-year business line and capital asset plans. This section would provide a revamped approach to Amtrak's planning and budget request process that better aligns with the proposed business line-oriented grant program structure, as well as improves the overall transparency and efficiency of that process. This new approach would allow Amtrak to make business decisions within a more predictable long-term context, while also allowing U.S. Department of Transportation (DOT) and other stakeholders to better understand and measure the past, current, and future performance of the Nation's passenger rail system.

The proposal would require two coordinated business plans each of which would cover a five-year period: a Business Line Plan and a Capital Asset Plan. These plans would replace several of the existing plans required of Amtrak in current code.

- Five-Year Business Line Plans will detail the operating and capital activities needed to effectively deliver passenger rail services in each of the business lines. These plans would be developed with close FRA coordination, and would directly inform both Amtrak's and FRA's annual budget requests.
- Five-Year Capital Asset Plans will be produced for each of the four primary categories of capital investment across all business lines: infrastructure, equipment, stations, and corporate. These plans will describe Amtrak's investment priorities and implementation strategies for each asset category, with specific projects identified as addressing backlog state-of-good repair needs, recapitalization/ongoing maintenance needs, upgrades to support service enhancements, or business initiatives with a defined return on investment. These plans will be coordinated with the service delivery needs identified in the Business Line Plans.

Although FRA would want to codify the language in an appropriate location in the U.S. Code, this proposal does not designate a location. This language could be used to replace 49 U.S.C. 24315(a) and (b).

#### **SEC. 9104. CLARIFICATION OF GRANT CONDITIONS.**

This section would provide that operators and entities that perform dispatching, maintenance of way, or signal system work for, or in support of, rail operations on Federally-funded rail infrastructure projects be considered "rail carriers" for purposes of the rail labor acts (retirement, Railway Labor Act, and unemployment). The section would provide limited exceptions where the work is performed by employees in crafts and classes recognized by the National Mediation Board.

This section also would provide that the grant conditions attached to the receipt of funding under the PRIIA and the proposed Rail Service Improvement Program apply to improvements to right-of-way owned by a railroad or used by a railroad for common carrier service.

## **SEC. 9105. RESEARCH AND DEVELOPMENT.**

This section would provide a clarification that FRA’s research and development (R&D) authority encompasses operations and technology rail R&D, in addition to rail safety-related R&D.

## **SEC. 9106. MISCELLANEOUS REVISIONS.**

This section would repeal section 204 of PRIIA, which calls for the development of an Amtrak five-year financial plan, because section 9103 of this Act sets forth a new Amtrak five-year planning process. This section would also extend the authorization in section 205(a) of PRIIA to make agreements to restructure Amtrak’s indebtedness.

This section would also update and align existing criminal penalty language at section 21311 of title 49, United States Code.

### **Subtitle B—Policy**

## **SEC. 9201. REGIONAL RAIL DEVELOPMENT AUTHORITIES.**

This section would authorize the Secretary to establish Regional Rail Development Authorities (RRDAs) in consultation with State governors. An RRDA established pursuant to this section has the power to undertake corridor development activities, such as planning, engineering, environmental analyses, coordinating financing, and managing construction contracting, and will be an eligible recipient of certain grants. Each RRDA will be led by an Executive Director appointed by the Secretary and will include a deliberative body with members representing all applicable States, Amtrak, freight railroads, and other stakeholders.

These RRDAs are intended to help overcome the numerous institutional and governance challenges inherent in developing, financing, building, operating, and maintaining regional networks of intercity rail corridors. The structure of the RRDAs is modeled on other Federally-chartered multi-State bodies charged with developing infrastructure projects, such as the Appalachian Regional Commission.

## **SEC. 9202. NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS ADVISORY COMMISSION.**

The Northeast Corridor faces a number of complex institutional challenges to moving forward with improvement projects. The critical corridor runs through 8 States and the District of Columbia, and carries nearly 2,500 trains per day operated by Amtrak, 9

commuter railroads, and 7 freight rail companies. This section would provide that the Northeast Corridor Infrastructure and Operations Advisory Commission will issue a report to Congress with recommendations regarding the appropriate mechanisms for managing, improving, financing, operating, and maintaining the Northeast Corridor, including a clear delineation of responsibilities among the Federal government, States, Amtrak, and other actors.

The Northeast Corridor Infrastructure and Operations Advisory Commission and associated stakeholders are currently discussing and developing governance-related policy options that may require additional legislative or regulatory actions in the future. The Department of Transportation is involved with these ongoing discussions.

### **SEC. 9203. STANDARDIZATION OF PASSENGER EQUIPMENT AND PLATFORMS.**

This section would require certain platform heights for new or rebuilt passenger platforms in certain geographic areas, where level-entry boarding platforms are required. Specifically, new or rebuilt passenger platforms in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont would have to be constructed and maintained at 48 inches above top of rail; new or rebuilt passenger platforms in Maryland and Pennsylvania would have to be constructed and maintained at 15 or 48 inches above top of rail, in coordination with the lowest floor height of equipment serving the platform; new or rebuilt platforms at Union Station in Washington, DC, would have to be built and maintained to facilitate level boarding for the equipment serving the platform; and all other new or rebuilt passenger rail platforms would have to be built and maintained at 15 inches above top of rail.

This section would further allow for a railroad owner to seek an exception to the passenger platform height requirements where an actual conflict between the requirement and an existing piece of equipment operated past the platform location exists, where the railroad owner presents information to FRA that it will provide level-boarding at a different height, or where a system that is in operation on the date of enactment of the Act provides a level-boarding platform.

### **SEC. 9204. NEXT GENERATION EQUIPMENT COMMITTEE.**

This section would provide that, not later than December 30, 2015, the Next Generation Corridor Equipment Pool Committee shall issue a report with recommendations regarding the appropriate mechanisms for procuring, managing, and maintaining passenger rail cars and locomotives used on the Northeast Corridor, State corridors, and long-distance routes. This section also adds labor organizations that represent employees who perform overhaul and maintenance work on passenger equipment used for intercity passenger rail transportation to the Committee.

The NGEC Commission and associated stakeholders are currently discussing and developing governance policy options regarding the coordinated management of the

Nation's intercity rail equipment fleet, some of which may require additional legislative or regulatory actions in the future. FRA is involved with these ongoing discussions.

#### **SEC. 9205. BUY AMERICA.**

This section would prevent the Secretary from obligating any funds authorized under subtitle V, title 49 (all FRA grant programs and Amtrak funding), or providing direct loans or loan guarantees under 45 U.S.C. 822 (RRIF), for contracts in excess of \$100,000, unless the steel, iron, and manufactured products used are produced in the United States. In addition, this section would also provide that the Buy America provisions are applicable to rolling stock and power train equipment (including train control, communication, traction power equipment, and rolling stock prototypes) purchased with non-Federal funds in connection with a project receiving Federal funds under 49 U.S.C. 24604(b).

This section would also identify circumstances in which the Secretary may waive this requirement, such as when applying it would be inconsistent with the public interest, the inclusion of domestic material would increase the cost of the end product by more than 25 percent, or, when procuring rolling stock or train control systems for high-speed rail, the rolling stock and train control systems are manufactured in the United States substantially from components produced or manufactured in the United States. In the event that the Secretary issues a waiver, the waiver request and justification must be published on the Department of Transportation's public Web site and in the Federal Register, and an opportunity for public comment on the finding must be provided. This section would preserve a State's ability to impose more stringent requirements than this section would provide.

This section would also require that all rolling stock procurements subject to the Buy America provision include, in their procurement proposals, a plan to increase the domestic material content of the rolling stock over the duration of the contract.

This section would further provide that persons may not receive a contract or subcontract made with funds authorized under subtitle V of title 49 or under 45 U.S.C. 822 where that person is found to have intentionally falsely represented that goods were produced in the United States.

This section would also repeal Amtrak's existing Domestic Buying Preferences (49 U.S.C. 24305(f)), as the Buy America requirements proposed in this Act would apply to Amtrak.

#### **SEC. 9206. RAIL PASSENGER TRANSPORTATION LIABILITY AND MANDATORY COVERAGE.**

This section would amend 49 U.S.C. 28103 to clarify that the authority in section 28103(b) to enter into contracts allocating liability for rail passenger transportation



preempts any other contrary law, including contrary State law. This section would also clarify that the liability cap in section 28103 applicable to rail passenger transportation applies equally to commuter rail transportation.

This section would also extend the mandatory coverage requirement, which currently only applies to Amtrak, to all providers of rail passenger transportation.

#### **SEC. 9207. SHARED-USE STUDY.**

This section would require the Secretary to conduct a study to evaluate operational, institutional, and legal structures that would best support high-performance passenger and freight rail services operating over shared-use infrastructure. Reassessing these parameters -- many of which have been in place for decades -- is necessary for two key reasons. First, there has been a growing realization among Federal, State, local, and private actors of the substantial public benefits generated by moving more people and goods by rail, and thus there is greater public interest in enhancing the rail network. Second, this Act authorizes a large, long-term, and predictable revenue stream for rail investments, creating an entirely new Federal policy and programmatic framework and altering the relationships between the Federal government, States, Amtrak, freight railroads, and other stakeholders.

The study will evaluate the following:

- the access and use of railroad right-of-way by a railroad that does not own the right-of-way;
- the effectiveness of existing contractual and regulatory mechanisms for establishing, measuring, and enforcing train performance standards, including identification of gaps in those existing mechanisms and identification of possible new approaches;
- mechanisms for measuring and maintaining benefits resulting from publically-funded freight and/or intercity passenger rail improvements, including those improvements directed towards shared-use right-of-way;
- standard approaches to operations, capacity, and cost estimation modeling that allows for transparent decision-making while also protecting the proprietary interests of all parties; and
- other issues identified by the Secretary.

This section would further require that, within 180 days after the establishment of a dedicated Rail Account within a Transportation Trust Fund, the Secretary shall submit recommendations to Congress. Such recommendations would be contingent upon the implementation of a dedicated funding source for rail. This section would also provide that the Secretary shall integrate such recommendations into its financial assistance programs and that the Secretary may promulgate rulemakings to integrate such recommendations.

#### **SEC. 9208. DISADVANTAGED BUSINESS ENTERPRISES; DISPARITY AND AVAILABILITY STUDY.**

Many of the rail transportation programs administered and implemented by the Department of Transportation create significant prime and subcontracting opportunities in which small disadvantaged businesses should have full and fair opportunity to compete. This section endorses the actions taken by the Department to commission a nationwide disparity study to examine the financial assistance programs for rail transportation administered by the Federal Railroad Administration to determine the extent to which gender and race discrimination or the effects of such discrimination adversely impact the award of contracts to small disadvantaged businesses. The study is to be completed within three years of enactment of the Act and its results reported to Congressional committees. The Secretary is directed to take appropriate and necessary action to remedy such discrimination or its effects found to exist.

### **Subtitle C—Planning**

#### **SEC. 9301. NATIONAL AND REGIONAL RAIL PLANNING.**

This section would define and provide requirements for a National Rail Development Plan and Regional Rail Development Plans. These plans are necessary to provide a long-range blueprint for proceeding with passenger and freight rail investments in a market-based, cost-effective manner.

#### **SEC. 9302. STATE RAIL PLANS**

This section would provide that the State Rail Plans required by section 303 of PRIIA be revised and resubmitted no less frequently than once every four years for acceptance by the Secretary (as opposed to once every five years for reapproval by the Secretary). This section would further strike the requirement that the State Rail Plans contain a statement that the State is in compliance with the requirements of 49 U.S.C. 22102 (which establishes eligibility requirements for the Local RAIL Freight Assistance program, which no longer exists).

### **Subtitle D—Safety Improvements**

#### **SEC. 9401. REQUIREMENT FOR UNIFORM OPERATING RULES.**

This section would authorize the Secretary to prescribe regulations or issue orders to require in small geographic areas, as defined by the Secretary, where two or more railroads serve as host railroads for joint operations that occur within a small geographic area, all such host railroads in the small geographic area shall develop unified operating rules governing all operations within the small geographic area. In particular, the unified operating rules would provide that the signal aspects and indications would be such that no aspect represents multiple indications for any operations within the small geographic area, the use of an after-arrival mandatory directive would be prohibited for any operations in non-signalized territory within the small geographic area, and track authority for any operations within the small geographic area would be conveyed using an identical

set of forms. In this context, the term "host railroad" means a railroad that has effective operating control over a segment of track. The term "joint operations" means rail operations conducted by more than one railroad on the same track, except as necessary for interchange, regardless of whether such operations are the result of (1) contractual arrangements between the railroads, (2) order of a governmental agency or a court of law, or (3) any other legally binding directive. The term "after-arrival mandatory directive" means any mandatory directive (any movement authority that affects the movement of a train) that makes the authority for movement of a train contingent upon the arrival of another train or trains. The term "non-sigaled territory" means the main track(s) of a subdivision of a railroad not equipped with either (1) wayside or cab signals comprising a traffic control system, automatic block signal system, or automatic cab signal system subject to 49 C.F.R. part 236, subparts A through G; or (2) a train control system with on-board apparatus responsive to the wayside, subject to 49 C.F.R. part 236, subpart H.

Railroad employees commonly conduct railroad operations over territories other than those of their employing railroad (foreign railroads), and must comply with the specific operating rules of the foreign railroad over which they are operating. The adoption of standardized operating rules in certain small geographic areas where multiple railroads have joint operations territories could help facilitate railroad employees' understanding of, and compliance with, those operating rules. The adoption of standardized operating rules in small geographic areas in the United States could result in reduced costs to the railroad industry in the area of training (especially where employees are required to operate over numerous foreign railroads), and also in the development of operating rules. Standardized operating rules would also help to reduce the interference with operating rule understanding and compliance when railroads merge, when railroad employees transfer from one railroad to another, and when new railroads are formed.

While FRA regulates the content of railroad operating rules (such as the 2008 regulations for the handling of equipment, switches, and fixed derails found in 49 C.F.R. part 218, subpart F)<sup>1</sup> to some extent, FRA generally permits each railroad to develop its own operating rules. These rules may vary significantly from railroad to railroad. Further, railroad operating rules are sometimes modified by special instructions from territory to territory within a railroad. The adoption of a standardized set of operating rules as proposed by this section could reduce confusion and create a safer working environment where two or more railroads serve as host railroads for joint operations that occur within a small geographic area. However, past efforts to harmonize operating rules have stalled before any consensus was reached. Although FRA's Administrator has the authority, by delegation from the Secretary (49 C.F.R. 1.89) to prescribe such regulations pursuant to its general rulemaking authority in 49 U.S.C. 20103, a specific legislative authorization would prompt action on this endeavor and ensure that harmonization efforts are not indefinitely delayed. However, nothing in this proposed section shall be construed to limit the authority of the Secretary to prescribe regulations or issue orders not authorized by this section.

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<sup>1</sup> 73 Fed. Reg. 8442 (Feb. 13, 2008); 73 Fed. Reg. 33888 (June 16, 2008).

In order to make harmonization more feasible, any regulations prescribed or orders issued by the Secretary pursuant to this section would only require in small geographic areas, as defined by the Secretary, where two or more railroads serve as host railroads for joint operations that occur within a small geographic area, that all host railroads in the geographic area develop unified operating rules governing signal aspects and indications, after-arrival mandatory directives, and forms used to convey track authority. These areas are subject to open National Transportation Safety Board (NTSB) safety recommendations R-09-01, R-09-02, and R-06-10.

After the November 30, 2007, collision between an Amtrak passenger train and a Norfolk Southern Railway Company freight train near Chicago, Illinois, NTSB recommended that FRA (1) "Establish uniform signal aspects that railroads must use to authorize a train to enter an occupied block, and prohibit the use of these aspects for any other signal indication;"<sup>2</sup> and (2) "Study the different signal systems for trains, identify ways to communicate more uniformly the meaning of signal aspects across all railroad territories, and require the railroads to implement as many uniform signal meanings as possible."<sup>3</sup> These recommendations highlight how requiring the harmonization of signal systems where operating crews may operate over multiple railroads, requiring the crew to be competent in multiple signal systems, would improve safety.

Following the May 19, 2004, collision between two BNSF Railway Company freight trains near Gunter, Texas, NTSB recommended that FRA "prohibit the use of after-arrival track warrants for train movements in dark (non-signaled) territory not equipped with a positive train control system."<sup>4</sup> Although NTSB acknowledged that "there may be some circumstances where the use of after-arrival orders in non-signaled territory is beneficial," it concluded that "the accident record has demonstrated that any use of these procedures increases the risk of train collisions." As alluded to earlier, FRA worked within the Railroad Safety Advisory Committee (RSAC) process to create a new subpart G in 49 C.F.R. part 218, Railroad Operating Practices, to prohibit after-arrival mandatory directives for non-signaled territory.<sup>5</sup> However, a consensus was not reached in the matter. This proposed statutory provision would authorize the Secretary to prohibit railroads from issuing an after-arrival mandatory directive to any train for use in non-signaled territory in specific small geographic areas.

## **SEC. 9402. POSITIVE TRAIN CONTROL.**

This section would amend 49 U.S.C. 20157 (section 20157), Implementation of positive train control [PTC] systems, in several ways and would add new 49 U.S.C. 20169, Federal Communications Commission spectrum licenses. First, subsection (a) would

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<sup>2</sup> NTSB Recommendation R-09-1.

<sup>3</sup> NTSB Recommendation R-09-2.

<sup>4</sup> NTSB Recommendation R-06-10.

<sup>5</sup> The RSAC Railroad Operating Rules Working Group considered issues involving after-arrival mandatory directives. The September 21, 2012 update on Task 05-02 (to reduce human factor-caused train accidents/incidents) reported that the working group continues to work on the issue of after-arrival orders.

provide implementation flexibility for covered railroads to install PTC systems, by requiring the Secretary to prescribe regulations to establish a schedule for the implementation of PTC systems, and permitting FRA as the Secretary's delegate to grant extensions when necessary under certain specified criteria. FRA is aware of technical and programmatic obstacles to meeting the December 31, 2015, deadline, and some Class I railroads have publicly acknowledged that they will not be able to complete PTC implementation by the deadline. These railroads have indicated that full implementation will not be complete until 2018 or 2020. In FRA's 2012 report to Congress,<sup>6</sup> FRA recommended that, if Congress were to consider legislation extending the PTC implementation deadline, it should consider giving FRA flexibility in approving PTC implementation plans.

By providing milestones for PTC system implementation, the Act recognizes that implementation is an immensely complicated undertaking and gives the Secretary the tools to ensure that railroads are working diligently towards completion and using the additional time granted wisely. Both passenger and freight railroads subject to section 20157 could be faced with the same or similar types of circumstances that are beyond their control which might significantly impact their ability to implement PTC on all segments of their operations by December 31, 2015.

While it is difficult to discern fully all of the potential obstacles to full implementation by the statutory deadline, two of the most significant obstacles are (1) the development and lack of implementation of a workable interoperability standard and (2) the availability of sufficient radio spectrum. Due to the significant cost related to the implementation of PTC systems and due to the need to ensure the safe and proper operation of such systems, some latitude should be provided to those entities that have taken appropriate action to implement PTC systems on their rail lines but that may not reach full implementation within the timeframe specified in section 20157 due to circumstances beyond their control.

Additionally, in the 2012 report to Congress, FRA recommended that Congress consider allowing alternative methods of improving rail safety in lieu of PTC where the alternatives provide an appropriate level of risk mitigation with respect to the functions of a PTC system. Subsection (c)'s proposed authority to allow alternative methods of protection, in lieu of PTC, would permit FRA to focus the burden of PTC system implementation on the most dangerous mainlines and allow a more appropriately-tailored reduction of risk on mainlines covered by the current statutory mandate to implement PTC systems. The Secretary does not view the authority to allow alternative protection methods in lieu of PTC systems to be authority to completely eliminate any railroad's responsibilities under the PTC mandate. Rather, the alternative protection authority would allow railroads to remove "particular mainlines" from the mandate where alternatives are appropriate. In particular, the amendment to section 20157 would permit the Secretary to approve the implementation of alternative risk mitigation strategies and technologies in lieu of the implementation of a PTC system on a mainline required to be

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<sup>6</sup> Federal Railroad Administration Report to Congress: Positive Train Control Implementation Status, Issues, and Impacts (August 2012), available at <http://www.fra.dot.gov/eLib/Details/L03718>.

equipped with a PTC system by the section. This section would allow entities providing regularly scheduled intercity or commuter rail passenger transportation and any subject freight railroad to petition the Secretary for approval of such a plan. Due to the significant high costs and other potential obstacles related to PTC implementation, there is a need to allow the use of other potentially less expensive and easier to implement operating strategies or other technologies to mitigate the types of risks that are mitigated by a PTC system. The alternative risk mitigation methods identified to be used by an entity on a particular mainline in lieu of PTC system must be capable of mitigating the risks that would have been addressed by a PTC system and the railroad entity must implement the alternate strategies or technologies on rail line segments from low to high risk.

FRA's third recommendation in the 2012 report to Congress suggested that Congress consider permitting the provisional certification and operation of PTC systems during FRA's review of the system. Prior to this provisional certification, railroads would be required to provide documentation to satisfactorily demonstrate safety performance and railroad operational competency. The provisional certification period would allow railroads to evaluate and further develop data supporting the safety of the PTC system, reflecting good engineering practice and well-documented risk mitigation strategies. During the period of provisional certification, railroads and the public receive the benefits of the PTC system, and FRA has an opportunity to review and evaluate all aspects of safety related to the system in a diverse, revenue service environment.

Additionally, in the 2012 report to Congress, FRA highlighted several issues of radio spectrum availability that would pose obstacles to PTC system implementation, primarily the lack of unencumbered spectrum in some areas and the cost of acquiring spectrum for passenger railroads. PTC systems have been designed to use radio spectrum as the medium for communication between wayside interface units, locomotive onboard PTC system apparatuses, and back office systems. However, the spectrum with the appropriate characteristics for PTC system implementation (such as propagation and vulnerability to topography), 220 MHz [megahertz], is not exclusively available to railroads for use in PTC systems. Class I railroads, through a spectrum holding company (PTC 220, LLC), have acquired sufficient spectrum for their use,<sup>7</sup> but spectrum acquisition issues remain for smaller commuter organizations. Further, as stated in the Northeast Corridor (NEC) Safety Committee's June 4, 2012, letter to the Secretary,<sup>8</sup> "while the major freight railroads have agreed to allow NEC railroads to use the 220 MHz frequencies, [this band width] is insufficient to support PTC operations by all railroad carriers in highly congested areas from Washington, DC, to Boston, Massachusetts."<sup>9</sup> Notably, the areas with the heaviest density of commuter railroads are also necessarily the areas with the most spectrum needs and the most competition for that

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<sup>7</sup> The Association of American Railroads (AAR), whose member railroads account for an estimated 80 percent of all railroad traffic in the United States, have established frequencies in the 220 to 222 MHz band as the standard for interoperable PTC.

<sup>8</sup> See Docket No. FRA-2011-0027.

<sup>9</sup> As of June 7, 2013, the specific railroads on the NEC that lack the necessary spectrum to implement PTC include Amtrak, Metro-North Railroad, New Jersey Transit, and Massachusetts Bay Commuter Rail.

spectrum.

The NEC Safety Committee's letter goes on to say that—

[t]he NEC railroads have attempted to obtain additional spectrum at reasonable terms and conditions consistent with public procurement requirements and extremely limited budget. Much of this spectrum is held by a single entity as an unintended consequence of earlier FCC public auctions of this spectrum before the requirements for PTC were mandated . . . . FCC's suggestion of 'secondary market' acquisition has proven to be an unviable approach to the problem.

There is other spectrum in the same frequency range that is held in FCC's inventory and is scheduled for public auction. [O]nce it is released for public auction, many commuter railroads are still in an untenable situation. Given their limited capital, structure as public entities, and procurement restrictions, coupled with the increased interest in the spectrum in question due to its use in implementing interoperable PTC, our member railroads [railroad members of the NEC Safety Committee] may be unable to obtain the spectrum at auction.

The same may be true of other similarly situated railroads located outside the NEC. To address this specific concern, subsection (d) would require the Chairman of the FCC and the Secretary to coordinate in order to identify and assess spectrum needs and availability for implementing PTC systems. Conversations with external stakeholders would be permitted as part of this coordination.

### **SEC. 9403. HOURS OF SERVICE REFORM.**

This section seeks full rulemaking authority with respect to the hours of service of railroad employees presently subject to a new and complicated, but still deficient and unempirical statutory scheme. FRA recently issued fatigue-science-based hours of service regulations to protect passenger train employees under new authority granted by the Rail Safety Improvement Act of 2008 (RSIA, P.L. 110-432), and the agency would like to evaluate the benefits and costs of continuing on this course and to focus on other fatigue issues with expanded authority to regulate the hours of service of other types of train employees as well as signal employees and dispatching service employees, based on sound, up-to-date science.

Fatigue, or lack of alertness, can cause not only outright sleep, but also loss of situational awareness, lapses, or narrowing of attention, slips of memory, poor decision-making, changes in reaction time, and other performance impairments that can precipitate a risky situation into an accident. It has been difficult to quantify the contribution of fatigue to accidents in all transportation industries, including railroading. However, since 2001, FRA has conducted research on a wide variety of topics related to fatigue in the railroad industry, including the measurement of fatigue, the work schedules and sleep patterns of railroad employees that cause fatigue, and the prevalence of sleep disorders among railroad employees. In addition, FRA has launched a Web site to provide railroad

employees with current information about fatigue, sleep disorders, and fatigue management.<sup>10</sup> FRA is also engaged with other agencies in coordinated efforts to professionalize work schedule and staffing management in industries that operate 24 hours a day, 7 days a week, because poorly designed work schedules and inadequate staffing are major contributors to fatigue. As noted below and in citations available upon request from FRA, these research and development activities position FRA to understand what causes fatigue in various employee groups, to establish a baseline for fatigue in those groups, and to suggest fatigue management strategies to ameliorate fatigue.

In RSIA, the Secretary, and by delegation FRA, were given the authority to regulate the hours of service of train employees providing rail passenger transportation. See 49 U.S.C. 21109. FRA published a regulation pursuant to that authority on August 12, 2011. See 76 Fed. Reg. 50359. FRA's new passenger hours of service regulation broke new ground in the application of fatigue science to passenger train employees. The regulation requires that railroads use a validated and calibrated fatigue model to analyze the work schedules of their train employees subject to the regulation, and mitigate fatigue that violates the established threshold. FRA has approved two models for use by railroads in meeting the requirements of 49 C.F.R. part 228: the Fatigue Avoidance Scheduling Tool (FAST) and the Fatigue Audit InterDyne (FAID) model. The regulation also provides a process for approval of new models as they are developed. See 49 C.F.R. 228.407.

The Secretary seeks to continue to use fatigue science to address fatigue in the railroad industry in a narrowly tailored way. Instead of having to fight the fatigue of operating employees using a statutory arsenal that is improved, but nevertheless still rigid, demonstrably inadequate, and unscientific, the Secretary would be permitted to act upon the scientific findings that exist to fight fatigue with a range of state-of-the-art approaches. Full regulatory authority would also allow FRA to develop these new limitations in a more transparent and less complex manner than the mechanisms currently available under statute. Thus, this section provides authority to modernize the hours of service limitations for all other train employees as well as signal employees and dispatching service employees. Such authority would allow FRA to use fatigue science to craft effective protections against fatigue that are narrowly tailored and avoid unnecessary regulatory burdens on railroads.

FRA anticipates that the rigorous scientific information that it now has about fatigue measurement, employee work and sleep, and accident risk can be used to establish hours of service regulations that provide a higher degree of safety than existing statutory requirements, without compromising the economic interests of the carriers or employees. Moreover, because the FRA fatigue research was conducted using data from prior to the

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<sup>10</sup> The Railroaders' Guide to Healthy Sleep Web site was launched in 2012 in collaboration with the Harvard Medical School's Division of Sleep Medicine and the WGBH Educational Foundation. The Web site offers railroad employees information on fatigue and medical conditions that could interfere with restful sleep in a user-friendly format. (<http://www.railroaderssleep.org/>).



effective date of the RSIA amendments, that research will provide a baseline for evaluating the effect of future hours of service regulatory changes on fatigue in the railroad industry. Good fatigue risk management practice requires that fatigue be measured both prior to changes in the management of fatigue and after changes are instituted to determine whether the changes are effective.

To further address the problem of fatigue in the railroad industry, this proposal would permit the Secretary to replace Chapter 211 (the existing, statutorily-defined system of prohibitions and requirements), with rules that reflect modern research. The hours of service statutory provisions, first enacted in 1907 as the "Hours of Service Act" and substantially revised in 1969, contain extremely limited substantive rulemaking authority. As a result, the countless questions left unanswered by the statutory text must be filled in by interpretation, which generally may be done without notice and comment, rather than by regulation, with its attendant safeguards of notice and comment. 49 U.S.C. 20103(e).

More important, the lack of regulatory authority over duty hours for freight train employees and for signal and dispatching service employees--authority that other DOT agencies have with respect to their modes of transportation--precludes FRA, as the Secretary's delegate for hours of service and other rail safety matters, from making use of scientific learning on the issue of sleep-wake cycles and fatigue-induced performance failures. FRA's general safety rulemaking power under 49 U.S.C. chapter 201 (formerly, the Federal Railroad Safety Act of 1970) provides ample authority to deal with the entire subject of maximum work periods and minimum rest periods in light of current information on those subjects. However, the hours of service laws effectively preclude such a rational regulatory initiative to protect these types of employees because FRA's general authority over railroad safety may be used only to supplement, not to supplant, laws that were already in effect on October 16, 1970, when the Federal Railroad Safety Act of 1970 was enacted. See 49 U.S.C. 20103(a).

Where the hours of service laws set a detailed and specific requirement, e.g., the maximum on-duty and minimum off-duty periods, maximum consecutive days, and cumulative monthly total for freight train employees, a regulation could not lawfully vary from them, despite how well justified by modern day science. Accordingly, regardless of the persuasiveness of the scientific knowledge presented during a rulemaking proceeding, FRA is not permitted to alter the fact that a freight train employee can be required or allowed to work for a railroad, to the maximum extent of each of the limitations, without any regard for the characteristics of employees' work schedules that may make one employee subject to much greater fatigue than another employee, though both employees work the same objective number of hours.<sup>11</sup>

In contrast to the limitations placed on FRA's authority to use its rulemaking power to address fatigue issues, other modal administrations within DOT may apply all scientific learning gathered during a rulemaking proceeding, and modify the maximum on-duty time or minimum off-duty time limitations of their hours of service regulations, as

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<sup>11</sup> Factors such as the time of day that an employee works, or predictability of an employee's work schedule may result in significant differences in the employee's level of fatigue.

appropriate. For example, the Federal Aviation Administration (FAA) and the Federal Motor Carrier Safety Administration (FMCSA) have hours of service rulemaking authority.

Even more anomalous than FRA's unique lack of hours of service rulemaking authority is the contradiction between the rules dictated by statute and the facts revealed by science. The following four examples illustrate some of the ways in which the existing hours of service statutory regime fails to reflect the latest scientific knowledge on the subject of fatigue. First, current scientific information indicates that to feel well rested most people need approximately eight hours of sleep per night. The current hours of service laws require a minimum off-duty period of 10 hours if an employee in train and engine service has worked up to 12 hours in the previous 24-hour period. During that 10-hour off-duty time, the employee must travel from work, attend to personal needs such as bathing and eating, and possibly travel back to work, if the employee had been previously notified to return at the end of the 10-hour uninterrupted rest. These hours must not be disturbed by a communication from the railroad, except in an emergency, or else the 10-hour period resets. Given these circumstances, it is certain that the current law permits employees to work with less than eight hours of sleep per night. An FRA study of locomotive engineers' sleep and work patterns found that the average locomotive engineer obtained 7.13 hours of sleep per night.<sup>12</sup> A more recent study found similar results, as FRA's 2009 study of the work schedules and sleep patterns of train employees, discussed above, found that they averaged 7.44 hours of sleep.<sup>13</sup> Another FRA study of train handling performance conducted on a highly realistic locomotive simulator by locomotive engineers working under schedules that conformed with the hours of service laws<sup>14</sup> found that engineers who worked ten hours and had 12 hours off duty, slept an average of only 6.1 hours. A similar group of engineers who also worked ten hours, but had only 9.3 hours off duty, slept an average of only 4.6 hours. Again, most people need about eight hours of sleep per night; therefore, for most people, the amount of sleep these engineers received was insufficient even though their schedules fully conformed to the hours of service laws.

Second, scientific information also shows that the quantity and quality of sleep vary with the time of day. Most people sleep best at night; however, the current hours of service laws do not take the time of day when sleep can occur into account. Under those laws, engineers who quit work at dawn and have to sleep during the daytime, when it is harder to sleep, get the same minimum ten hours off as engineers who quit work in the evening and have the relative luxury of sleeping at night. The study by Pollard referenced earlier found that engineers, in fact, obtain the least sleep if their on-duty period ends between 5:00 a.m. and noon.

Third, most mammals, including human beings, have an approximately 24-hour sleep-wake cycle known as a "circadian rhythm." Rapid changes in the circadian pattern of

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<sup>12</sup> Pollard, J. K. 1996. Locomotive engineer's activity diary. Report Number DOT/FRA/RRP-96/02.

<sup>13</sup> See *Work schedules and sleep patterns of railroad train and engine service workers* at footnote 15.

<sup>14</sup> Thomas, G. R., Raslear, T. G., and Kuehn, G. I. 1997. The effects of work schedule on train handling performance and sleep of locomotive engineers: A simulator study. Report Number DOT/FRA/ORD-97-09.

sleep and wakefulness disrupt many physiological functions such as hormone releases, digestion, and temperature regulation. Human function can be affected, performance may be impaired, and a general feeling of debility may occur until realignment is achieved. The maximum work periods and minimum off-duty periods specified in the current hours of service laws force sleep-wake cycles into a less-than-24-hour pattern that is highly unnatural and very difficult to adapt to. Jet lag when flying east is the most commonly experienced syndrome similar to the experience of consistently working on a less-than-24-hour cycle.

Fourth, studies "suggest that sleep loss (less than 7 hours per night) may have wide-ranging effects on the cardiovascular, endocrine, immune, and nervous systems, including the following:

- Obesity in adults . . .
- Diabetes and impaired glucose tolerance
- Cardiovascular disease and hypertension
- Anxiety symptoms
- Depressed mood
- Alcohol use[.]"<sup>15</sup>

In other words, sleep loss, which the current hours of service regime permits railroad operating employees to suffer, contributes not only to the safety risk of fatigue, but also to a gamut of health risks, including the risk of serious health problems such as diabetes, cardiovascular disease, and hypertension.

The proposed legislation would allow FRA to take modern research on fatigue into account and adjust the regulatory scheme accordingly. Under the proposed legislation, which would add new section 20171 to chapter 201 of title 49, U.S. Code, these adjustments to the regulatory scheme would occur in an orderly manner in three specified stages.

First, the Secretary would be required to issue regulations embodying the substantive statutory provisions of the hours of service laws. These initial regulations ("status quo regulations"), which would merely restate in regulatory format the existing statutory requirements, would not be subject to judicial review. The hours of service laws would cease to be effective on the effective date of these status quo regulations. A conforming revision of 49 U.S.C. 20103(a) would also become effective the same date.

Second, the Secretary would be authorized to revise the mandated initial regulations using the agency's general rulemaking authority under 49 U.S.C. 20103(a) as revised by the Act.

The Secretary does not anticipate increasing the existing maximum limits on duty hours for a normal workday (generally 12 hours in a 24-hour period, except for a 16-hour limit

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<sup>15</sup> Institute of Medicine of the National Academies. Sleep Disorders and Sleep Deprivation: an Unmet Public Health Problem (2006), p. 59.

in certain emergencies), which are the basic protections in the current laws, except in situations where there are valid compensating protections, demonstrated by research. For example, the proposed legislation would allow the Secretary to initiate a rulemaking proceeding that might, in some limited scenarios where there is actually a safety benefit to employees who work longer hours, permit an increase in the maximum on-duty limits for a normal workday under certain circumstances that would result in the normal working hours occurring mostly during the daytime hours and increase the subsequent time off during nighttime hours, thereby realigning the work/rest pattern closer to a normal 24-hour cycle, all of which conditions would likely make the schedule less fatiguing than the same number of hours worked by an employee with different circumstances.

Any amendments to the initially mandated regulations would be subject to the notice-and-comment procedures specified in section 20103; however, the scientific determinations supporting the final rule amendments to the initially mandated regulations would not be subject to judicial review, but would be committed to the discretion of the Secretary.

As to the substance of the amendments to the regulations mandated by proposed 49 U.S.C. 20171(a), the Secretary would be required to prescribe the maximum hours of service for the group of individuals performing safety-critical duties and any further requirements that the Secretary believed to be needed to afford a reasonable degree of fatigue prevention or mitigation or both. In view of the wide range of working conditions in the railroad industry, the measures necessary to achieve that reasonable degree of fatigue prevention and mitigation will necessarily vary a great deal.

The third and final stage of rulemakings on fatigue would be conducted under the Secretary's broadened rail safety rulemaking authority of 49 U.S.C. 20103(a), as amended by this bill. In particular, after the Secretary conducted the special rulemaking with respect to a particular category of employees (e.g., train employees other than passenger train employees or all scheduled train employees), pursuant to the procedures required by proposed 49 U.S.C. 20171(b) and (c), the Secretary would be free to amend the regulations applicable to the category of employees that were prescribed under that special rulemaking procedure, as necessary, subject to the requirements of the ordinary rulemaking process of 49 U.S.C. 20103, as amended by this proposal, to reflect any relevant matters, including new research, new technology, and practical experience implementing the new regulatory regime.

Finally, this section of the bill would recodify a provision that happens to be part of Chapter 211, but that primarily relates not to railroad safety but to railroad labor law. That provision, 49 U.S.C. 21107, Maximum duty hours and subjects of collective bargaining, would not be converted to DOT regulations. Rather, on the effective date of the status quo regulations, the section would simultaneously cease to be effective and new section 49 U.S.C. 20172 shall become effective.

#### **SEC. 9404. AMENDMENTS TO THE SAFETY APPLIANCE LAW.**

This section, would clarify and slightly relax an antiquated statutory provision that governs whether and how a railroad may move a car or locomotive with a safety appliance defect or insecurity under 49 U.S.C. ch. 203, Safety Appliances, in order to make repairs, without becoming liable for a civil penalty. It should be emphasized that the statutory provision protects a railroad from civil penalty liability for using or hauling a defective or insecure vehicle but does not insulate the railroad from any other kind of liability, e.g., in tort for money damages at common law or under the Federal Employers' Liability Act. Additionally, this section would allow for the Secretary to exempt certain equipment from the application of 49 U.S.C. 20302 via regulations promulgated pursuant to the Administrative Procedure Act.

The proposed changes would make this statutory movement-for-repair provision more consistent with current regulatory provisions that govern the movement for repair of the same rolling equipment when it has a different type of defect or insecurity, such as one under the Freight Car Safety Standards (49 C.F.R. part 215), Locomotive Safety Standards (49 C.F.R. part 229), or Passenger Equipment Safety Standards (49 C.F.R. part 238). The objectives of the Act are (1) to create a greater certainty in the interpretation of the statutory provision by adding general statutory definitions of statutory terms and by giving the Secretary authority to prescribe more specific regulatory definitions and (2) to enhance safety and allow railroads to realize greater efficiencies by fostering the use of mobile repair trucks at locations on an occasional basis, by eliminating the need for back hauls of defective vehicles for repairs, and by explicitly authorizing the prescription of additional regulatory conditions for hauling defective vehicles for repair.

Specifically, this section of the Act would revise 49 U.S.C. 20303, the section of the safety appliance laws (49 U.S.C. ch. 203) that prescribes a series of strict conditions that a railroad must satisfy in order to move a car or locomotive with a defective or insecure safety appliance ("defective vehicle") for purposes of repair without being subject to civil penalty liability. Currently, a vehicle with a defect or insecurity prohibited by the safety appliance laws may be hauled from the place where the defect or insecurity was first discovered only if--

- the vehicle was originally equipped in compliance with the safety appliance laws,
- the movement is necessary for repair of the vehicle, and
- either the movement is to the nearest available repair point on the line of the railroad that discovered the defect or insecurity or, if the connecting carrier chooses to accept the vehicle in interchange, the movement is to a repair point on the connecting railroad that is at least as close to the point of interchange as the repair point on the delivering railroad.

The movement-for-repair provision in section 20303 was originally enacted in 1910 and was last amended substantively in 1983. Pub. L. No. 97-468. Over the almost 100 years since it has become law, it has been interpreted by the courts in numerous decisions, and FRA has also provided guidance (but not regulations) on its meaning, including some incorporated in amendments at 49 C.F.R. 232.15. See 49 U.S.C. 103 and 49 C.F.R. 1.89.

This section of the bill would make three major changes in this statutory provision. First, the proposal would define the statutory term "place at which the repairs can be made," clarify the statutory term "necessary for repairs," and authorize rulemakings to further clarify related terms so as to encourage the use of mobile repair trucks at points that they service regularly and to reduce the existing provision's perverse incentive against railroads' acquisition and use of such trucks. Second, the proposal would define the statutory term "nearest" so as to obviate "back hauls," or reverse movements, to a "backward" repair point if the repair point is geographically closer than the nearest forward repair point to avoid civil penalty liability. If the first and second changes are read together, the proposal would allow a railroad to repair a defective vehicle by hauling it from the place where the railroad first discovers the defect to the nearest available location on its line, in the forward direction of travel, that has a fixed repair facility or that is served regularly (as defined in regulations to be promulgated the Secretary) by a mobile repair truck capable of repairing the defect, without running the risk of being cited for a civil penalty. Currently, a civil penalty might be assessed against the railroad for hauling the defective vehicle to the proposed legitimate repair point, on the grounds that the haul did not meet the statutory hauling-for-repair conditions, either because the haul was unnecessary for repairs because a mobile repair truck could have been summoned to the point of discovery of the defect or, even if some kind of haul from the point of discovery was necessary for repairs, because the haul was not to the nearest available repair point. It should be noted that FRA currently interprets the existing statutory provision to require that a mobile repair truck be at a location on a regular basis (i.e., daily or several times a week) in order for a location to be considered a location where repairs must be made. Thus, the amendment would be consistent with FRA's existing enforcement practices. Lastly, this section would clarify the Secretary's authority to supplement the statutory conditions for hauling certain defective equipment with additional regulatory conditions if needed for safety.

As to the proposed amendments relating to mobile repair trucks in particular, a factual description of these trucks may be helpful. A mobile repair truck is a motor vehicle operated on a street or highway (not on railroad tracks), ordinarily a pick-up or utility truck, that is equipped with tools, supplies, and spare parts and used by a railroad's mechanical personnel to travel to various locations on the railroad's property for purposes of making certain types of repairs to on-track equipment. Typically, a mobile repair truck is assigned to cover a number of different locations within a certain geographic area on the railroad's property. Mobile repair trucks make it possible for railroads to conduct most types of repairs at virtually any siding or along any trackage that is accessible by road. To require defective vehicles to be immediately stopped and repaired at all such locations would be both unsafe and unrealistic today. Nor does FRA interpret or enforce the existing provision in such an unrealistic fashion. As previously mentioned, the original version of the statutory provision at 49 U.S.C. 20303 was put into place in 1910. This was long before the emergence and extensive use of mobile repair trucks.

The proposed amendment would eliminate a potential narrow reading of the statute as containing a threat of a civil penalty for moving a defective vehicle from a location

because of the railroad's having the mere capability to use (as opposed to the regular practice of using) a mobile repair truck to accomplish the repairs at the same location. The potential for these civil penalties discourage railroads from acquiring or fully utilizing mobile repair trucks. Refraining from buying or using mobile repair trucks in turn means that the railroad must haul defective or insecure vehicles only to fixed, stationary repair facilities, which tend to be farther away than locations that could be served by trucks. The result is that defective vehicles are hauled for longer distances than they would be hauled if another means of effecting the repairs were available to the railroad, namely, mobile repair trucks. Enactment of these amendments would, therefore, tend to enhance safety by fostering the use of mobile repair trucks at points that they do not normally service.

As to the amendment in this section relating to back hauls, because the existing statutory provision also requires that the movement for repair must be to the nearest available repair point, the existing statutory provision also potentially requires the movement of defective equipment in a direction or to a location not intended by the operating railroad (i.e., back hauling). Such movements could be both unsafe, because of the safety hazards associated with switching a car out of one train and into another, and inefficient, because the equipment would be diverted from its planned destination in order to be repaired at a location that may be physically closer to the point where the defect was originally discovered. In this day of on-time delivery, the need to foster efficiencies while maintaining the highest degree of safety is paramount.

The present statutory provision creates an atmosphere of uncertainty for both Federal regulators and the regulated community when determining whether a particular location is the nearest available location capable of making necessary repairs. The mobile-repair-truck and back-hauling amendments would clarify which locations are capable of making repairs and would specifically acknowledge that in determining the nearest available repair point one should consider only points in the forward direction of travel for the defective vehicle (i.e., places en route to the destination of the vehicle).

Moreover, enactment of these amendments would not raise safety issues, given the existence of other legal safeguards and the consistency of the proposed approach with that of existing regulatory provisions governing the movement of equipment with other types of defects. Allowing a vehicle with a safety appliance defect or insecurity (e.g., with excessive piston travel on a car's power brake or with a broken handhold) to be hauled past places occasionally served by mobile repair trucks is not unsafe if the railroad meets the proposed statutory conditions as well as additional existing regulatory provisions. Many additional regulatory conditions (such as placing tags or cards on both sides of a defective vehicle or using automatic defect tracking) have already been established under the Secretary's general rail safety rulemaking authority at 49 U.S.C. 20103(a) for hauling cars with power brake and other safety appliance defects. See 49 C.F.R. 232.15 and 238.15-238.17. Furthermore, existing statutory and regulatory provisions ensure the prompt and safe handling of equipment with defective power brakes. These include the requirement to have 100-percent operative power brakes on all equipment before departing a train's initial terminal and the prohibition on the continued

operation of any freight train with less than 85 percent of its units with operative brakes. See 49 U.S.C. 20302(a)(5), 49 C.F.R. 232.103(d) and (e).

As to the consistency of the proposal with existing regulatory movement-for-repair provisions applicable to other types of defects, FRA safety regulations permit the movement of vehicles with defects and insecurities that are equally or more safety-critical under the provision at 49 C.F.R. 215.9 to whatever location the railroad chooses if the railroad's mechanical inspector verifies the safety of the move, imposes appropriate operating restrictions, the train crew is notified of the presence of the vehicle in the train, and the vehicle is properly tagged. For example, a freight car with a cracked bolster or a wheel with a 2½-inch flat spot may lawfully remain in use, provided the conditions noted above are met. Similarly, the provisions contained in 49 C.F.R. 229.9 of FRA safety regulations permit a locomotive with a non-complying condition to continue in use to the next forward point where the necessary repair can be made or to its next calendar day inspection, whichever occurs first. Thus, the revised movement-for-repair provision proposed in this amendment would be more consistent with other Federal requirements related to the handling of defective equipment than the existing statutory provision.

To effect the changes discussed, this section of the bill would add new subsections (d) and (e) to 49 U.S.C. 20303. In new subsection (d), paragraph (1) would define the statutory term "place at which the repairs can be made" to mean, on the one hand, a site with a fixed facility for making the repairs needed to remedy the vehicle's safety appliance defects or insecurities and to achieve conformity with the safety appliance laws or, on the other hand, a site at which a mobile repair truck capable of being used to make the repairs to the vehicle provides service regularly as specified under regulations to be prescribed by the Secretary. New paragraph (2) would define the statutory term "nearest" to mean the closest in the direction in which the defective vehicle is being moved. When these paragraphs are read together, new subsection (d) would interpret the nearest repair point for purposes of 49 U.S.C. 20303(a) as a location with a fixed repair facility or serviced regularly by a mobile repair truck capable of being used to repair the defective vehicle that is the closest in the forward direction of travel of the vehicle. These changes would remove the uncertainties involved with considering locations where mobile repair trucks are used on an occasional basis and would eliminate the safety hazards related to the back-hauling of equipment. Paragraph (3) would make clear that a haul of a vehicle from the place where it was first discovered to be defective or insecure does not become unnecessary under subsection (a) simply because a mobile repair truck is capable of traveling to the place and repairing the vehicle or has done so in the past on an irregular basis as defined by regulations issued by the Secretary. New subsection (d) would promote the use of mobile repair trucks, thereby expediting repairs, would clarify the statutory movement-for-repair provisions, and would make the statutory provisions more consistent with other Federal requirements related to the use and movement of defective equipment without compromising safety.

New subsection (e) in 49 U.S.C. 20303 would explicitly authorize the Secretary to prescribe, by regulation or order, conditions for hauling a car or locomotive with a safety appliance defect for repair, in addition to the movement-for-repair conditions established



by the statute. As previously indicated, many conditions for hauling cars with power brake and other safety appliance defects have already been established through regulations prescribed under the Secretary's general rail safety rulemaking authority at 49 U.S.C. 20103(a). New subsection (e) would support the validity of these regulations and allow the Secretary to prescribe new regulations concerning the conditions under which a railroad may move a defective vehicle to make repairs without civil penalty liability, if necessary for safety.

Finally, new subsection (b)(3) in 49 U.S.C. 20306 would authorize the Secretary to exempt certain types of equipment from the application of 49 U.S.C. 20302 through a rulemaking subject to the Administrative Procedure Act (5 U.S.C. 553). This new provision would allow FRA to ensure that there are more appropriate applications of safety appliances on modern equipment designs than the existing statutory language in 49 U.S.C. 20302 permits. The existing statutory language in 49 U.S.C. 20302 may inhibit the appropriate application of safety appliances on modern equipment designs, particularly on aerodynamic high-speed rail trainsets. This section would remedy this issue by amending 49 U.S.C. 20306 to allow FRA the flexibility to exempt certain equipment from the requirements of 49 U.S.C. 20302 by regulation.

#### **SEC. 9405. AMENDMENTS TO THE LOCOMOTIVE INSPECTION LAW.**

This section would amend 49 U.S.C. 20701 to reflect modern innovations in locomotive power sources. Some railroads have indicated a desire to move quickly to adopt liquefied natural gas (LNG) as a power source for locomotives that could reduce fuel costs and harmful emissions; however, FRA has not had an opportunity to ensure that these new locomotives are sufficiently safe for revenue service. As technology continues to develop, it is likely that FRA would continue to be presented with similar issues. Thus, this section prohibits a railroad from using or allowing use of a uniquely-designed locomotive or tender in service on its line unless the Secretary has approved the unique design or new power source technology. This section would also define "new power source technology" as a technology employing a source of motive power other than diesel fuel, electricity, or steam.

#### **SEC. 9406. TECHNICAL AMENDMENT TO THE PROVISION ON PROTECTION OF RAILROAD SAFETY RISK REDUCTION PROGRAM INFORMATION.**

This section would revise 49 U.S.C. 20119(b) to clarify that FRA, as the Secretary's delegate, may prescribe regulations that prohibit the discovery or admission into evidence, in the course of civil litigation for damages involving personal injury, wrongful death, or property damage, of certain information developed by a railroad pursuant to a regulation prescribed or order issued as part of FRA's rail safety risk reduction program. FRA has so interpreted this provision in its notice of proposed rulemaking on the risk reduction program regulations for commuter and intercity passenger railroads. See 77 Fed. Reg. 55372 (Sept. 7, 2012), proposed section 270.105.

For a risk reduction program to be effective, FRA must have confidence that railroads are conducting robust analyses to accurately identify risks present. To balance the interests of safety and the public interest, existing 49 U.S.C. 20119(b) permits FRA, as the Secretary's delegate, to promulgate regulations addressing the results of the study. Existing 49 U.S.C. 20119(a) calls for FRA to study "whether it is in the public interest, including public safety and the legal rights of persons injured in railroad accidents, to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any plan, document, report, survey, schedule, list or data compiled or collected solely for the purpose of evaluating, planning, or implementing a railroad safety risk reduction program required under this chapter . . . ." FRA completed the study in October 2011. See Docket No. FRA-2011-0025. The study indicated that protecting the information from discovery would enhance safety because it would encourage a railroad to describe its safety vulnerabilities and risks, including its security vulnerabilities, and the mitigation measures it has identified with which it will address those risks, in documents that are serious, comprehensive, and in-depth analyses. Because railroads will not want to produce professional risk reduction analyses if they may be released in response to discovery requests, safety is enhanced by prohibiting their release. In addition, because terrorists could use these analyses to plot attacks against railroads, security requires that the analyses not be released. To that end, this technical amendment would make clear that the protections against discovery of this information and against its admission into evidence are also applicable to civil actions for property damages.

As revised, 49 U.S.C. 20119 would enable FRA, as the Secretary's delegate, to bar discovery or admission into evidence of certain risk reduction information in the course of civil litigation for damages involving personal injury, wrongful death, or property damages. All information compiled or collected in order to develop, identify, evaluate, plan, or implement a railroad safety risk reduction program pursuant to a DOT regulation or order requiring a railroad safety risk reduction program could be shielded.

#### **SEC. 9407. NOISE EMISSION STANDARDS.**

This section would amend 49 U.S.C. chapter 201 by adding a new section 20170 that authorizes the Secretary to issue regulations governing railroad-related noise emission standards for railroad carriers operating on the general railroad system of transportation, including noise related to magnetic levitation systems. The Environmental Protection Agency (EPA) has issued noise emission standards for interstate railroad carriers pursuant to the Noise Control Act of 1972 (40 C.F.R. part 201), which establish maximum noise emission levels for specific kinds of (i) on-track railroad equipment, (ii) railroad operations, and (iii) railroad facilities. As an example, certain moving locomotives may emit a maximum of 90 decibels when measured at 100 feet from the track centerline. 40 C.F.R. 201.12(b). These standards have, in effect, become the design criteria for railroad equipment in the United States, and there has been little or no problem with compliance by the traditional freight and passenger rail equipment. However, the standards have not been substantially revised since their promulgation in 1980, and they therefore fail to account for advances in equipment development best

practices and modern passenger rail operations. The EPA's Office of Noise Abatement and Control was closed in 1981, with primary responsibility for noise regulation falling to the States and localities. However, the regulation of railroads is fundamentally a Federal issue, and not amenable to State-by-State regulation. As FRA already enforces the existing noise emission levels and regulates other elements of locomotive and rolling stock design, FRA is best positioned to revise these regulations going forward.

Under this provision, the Secretary, with the concurrence of the Administrator of the EPA, would be authorized to issue regulations that establish the permissible noise emissions for railroad carriers operating on the general railroad system of transportation. Regulations issued pursuant to this section may consider variances in maximum pass-by noise with respect to the speed of the equipment, account for current engineering best practices, and encourage the use of noise mitigation techniques only where reasonable and the benefits exceed the costs. For example, the regulation might include a noise standard that specifies the maximum permissible sound energy emission of the passage of a total train as opposed to the specification of maximum permissible noise emission levels for specific pieces of rail equipment. Such specification of the maximum sound energy level for a train would allow the determination of the maximum noise exposure resulting from the passage of a train. The specification of maximum sound energy level is consistent with the current European approach to the regulation of rail operation noise. In establishing the maximum permissible sound energy level for rail operations, the Secretary may consider the maximum levels permitted by countries with more recent standards as well as the maximum sound exposure levels resulting from average or typical U.S. rail freight trains operating in compliance with existing EPA standards. Additionally, current EPA regulations are not graduated and treat slow-moving trains (e.g., 10 mph) similar to trains moving at 79 mph or 220 mph. Thus, new regulations on railroad noise emission standards could incorporate current engineering best practices and allow for graduated maximum noise levels accounting for these variations, potentially reducing the noise emissions of slow-moving rail traffic. Moreover, regulations issued pursuant to this section may encourage railroads to reduce the impact of noise emissions on communities surrounding rail operations through the use of noise mitigation techniques, where those techniques are reasonable and the benefits exceed the costs.

#### **SEC. 9408. TECHNICAL AMENDMENT TO CHAPTER 201 GENERAL CIVIL PENALTY PROVISION.**

This section would amend one provision on rail safety civil penalties to clarify that it is consistent with two other such provisions. In particular, this section would amend the general civil penalty provision at 49 U.S.C. 21301 (which applies only to violations of regulations and orders issued under 49 U.S.C. ch. 201 (formerly the Federal Railroad Safety Act of 1970) and to violations of 49 U.S.C. 20160 (crossing inventory) by inserting before the last sentence in 49 U.S.C. 21301(a)(1) the additional sentence: "An act by an individual that causes a railroad carrier to be in violation is a violation." The quoted sentence currently appears in the civil penalty provisions at 49 U.S.C. 21302 and 21303, which apply to violations of the pre-1970 rail safety statutes and regulations and orders issued under those statutes, but not in 49 U.S.C. 21301.

## **SEC. 9409. MISCELLANEOUS AUTHORIZATION OF APPROPRIATIONS.**

Section (a) would additionally authorize appropriations for the Secretary to conduct a study of the severity, frequency, and other characteristics of railroad operations that block highway-rail grade crossings. FRA frequently receives complaints about railroad operations blocking highway-rail grade crossings for long periods of time, but a 2006 FRA report concluded that insufficient information was available to create a national picture of delays. Previous studies of the issue have relied on anecdotal information due to a lack of comprehensive data. This section would provide an opportunity to work with other DOT modal administrations, such as the FHWA, to identify best practices of transportation development to avoid blocked crossing issues and to improve highway-rail grade crossing safety.

Section (b) would also authorize appropriations for the Secretary to conduct a study of track electrification and the development of standards for track electrification. The continued progress of FRA's high-speed rail initiatives is driving more electrification of track segments, thus additional study is recommended.

Section (c) would also authorize appropriations for the Secretary to conduct a study of whether train length correlates with the severity and frequency of train derailments.

## **SEC. 9410. REPAIR AND REPLACEMENT OF DAMAGED TRACK INSPECTION EQUIPMENT.**

This section would enable the FRA to accept and expend funds received from a third party to repair damages to track inspection equipment owned by the United States Government as a result of negligence of that third party. Language similar to this proposal has been included in consolidated appropriations acts for a number of years. The inclusion of this language in the appropriations acts was triggered by an incident in which rolling stock equipment owned by FRA was damaged by actions of a freight railroad. The freight railroad offered funds to fix the damage; however, FRA did not have the authority to accept and expend the funds for such a purpose at that time. Instead of including this authority on a yearly basis via an appropriations act, this proposal would establish the authority on a permanent basis.

### **Subtitle E—Miscellaneous Revisions and Technical Corrections**

## **SEC. 9501. AUTHORIZATION OF APPROPRIATIONS.**

This section would authorize appropriations for all FRA safety and operations for FY 2015-2018. This section would also make technical corrections striking the following codified expired or expiring authorizations: Operation Lifesaver authorization for FY 1995-1997; Rail line relocation program authorization for FY 2006-2009; Railroad safety

technology grants authorization for FY 2009-2013; railroad safety infrastructure improvement grants authorization for FY 2010-2013; Local Rail Freight Assistance for FY 1993-1994; Class II/III grant program authorization for FY 2008-2011; Highway-Rail Grade Crossing Safety Program authorization for FY 2010-2013; Amtrak capital authorization for FY 1998-2002; PRIIA section 302 HSIPR congestion grants authorization for FY 2010-2013; PRIIA 301 HSIPR authorization for FY 2009-2013; NEC Improvement program authorization; Rail cooperative research program authorization for FY 2010-2013; High-speed rail authorization for FY 2006-2013; and PRIIA section 501 HSIPR authorization for FY 2009-2013.

## **SEC. 9502. TECHNICAL CORRECTIONS TO THE RAIL SAFETY IMPROVEMENT ACT OF 2008.**

This section would make minor corrections for technical reasons to various provisions of title 49 of the United States Code that were enacted in, or amended by, RSIA. These correcting amendments are arranged according to the number of the section in title 49 of the United States Code that is being amended. Most of these changes are self-explanatory and are made either to clarify the meaning of the provision, such as by substituting defined statutory terms for undefined terms; to replace colloquial language with more formal language; to correct a minor error of spelling, capitalization, punctuation, or diction; or to eliminate an ambiguity or internal inconsistency. As one example of the technical corrections, the proposal substitutes "rail passenger accident" for "railroad passenger accident" in 49 U.S.C. 1139(j)(2) because 49 U.S.C. 1139(h)(1) contains a definition of "rail passenger accident" as "any rail passenger disaster resulting in major loss of life . . . ."

One of the technical amendments in this section requires more explanation: the amendments at subsection (h) concerning reports on railroad crossings. Subsection (h) of this section revises 49 U.S.C. 20160, the provision requiring railroads to report information about highway-rail crossings (crossings) to the U.S. Department of Transportation's National Crossing Inventory (Inventory). Subsection (h) clarifies that 49 U.S.C. 20160 requires a railroad to report on each crossing that it operates through, but only with respect to the track or tracks on which it operates. A railroad should not be required to report on matters at the same crossing but regarding a track on which it does not operate because that carrier is not the best source of this information. Instead, only the railroad that actually operates on a track through a crossing should have to report information concerning traffic on that track. Currently, the literal language of 49 U.S.C. 20160 requires a railroad to report to the Inventory current information specified by the Secretary (which by the Secretary's instruction includes information on the amount and type of train traffic through a crossing) on a track that the railroad does not in fact use, simply because the railroad happens to operate on a different track through the same crossing. As a result, according to the words of the statute, the Secretary is required to receive information on every track at a crossing from each railroad that happens to operate on any track at the crossing. To rectify this problem, subsection (h) revises 49 U.S.C. 20160, in subsection (a)(1) by striking the word "or" from the phrase "concerning each previously unreported crossing through which it operates or with respect to the

trackage over which it operates"; and in subsection (b)(1)(A) by striking the word "or" from the phrase "concerning each crossing through which it operates or with respect to the trackage over which it operates".

**SEC. 9503. TECHNICAL CORRECTION TO INTRODUCTORY TEXT OF PUBLIC LAW 110-432.**

This section would revise the introductory text of Public Law 110-432 by replacing the incorrect reference to the "Federal Railroad Safety Administration" with the correct name of the agency, the "Federal Railroad Administration".

**SEC. 9504. TECHNICAL CORRECTIONS TO UNCODIFIED PROVISIONS OF DIVISION A OF PUBLIC LAW 110-432, THE RAIL SAFETY IMPROVEMENT ACT OF 2008.**

This section would make technical corrections to provisions of RSIA itself with respect to provisions that are not amendments to the United States Code. The technical corrections are arranged according to the number of the section or title of RSIA.

**SEC. 9505. TECHNICAL CORRECTIONS TO PROVISIONS OF THE HOURS OF SERVICE LAWS AND RELATED CIVIL PENALTY PROVISION.**

Subsections (a) and (c) of this section of the Act would clarify interrelated provisions of the hours of service laws at 49 U.S.C. ch. 211. Subsection (a) would amend 49 U.S.C. 21102(c) to clarify that, like train employees of intercity and commuter railroads, the train employees of tourist, historic, scenic, or excursion railroads (tourist railroads) are subject to "old section 21103," i.e., 49 U.S.C. 21103 as it existed on the day before the enactment of RSIA. In turn, subsection (c) clarifies the scope of the Secretary's authority to prescribe hours of service regulations and orders for train employees under 49 U.S.C. 21109(b) that may differ from the requirements of 49 U.S.C. 21103, as amended by RSIA. Currently, 49 U.S.C. 21109(b) authorizes such regulations and orders "for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title) . . . ." The Secretary believes that Congress intended that these authorized substantive hours of service regulations and orders apply to the train employees of all railroads that provide rail passenger transportation and that Congress did not intend to apply the statutory provision applicable to freight service (49 U.S.C. 21103 as amended in 2008) to the train employees of tourist, historic, scenic, and excursion railroads (tourist railroads) because tourist railroad operations are more similar to other passenger service than they are to freight service. For example, passenger operations tend to be scheduled whereas freight operations tend to be unscheduled. Like classic intercity and commuter rail operations, tourist railroad operations tend to be scheduled. The provisions of the hours of service laws that apply to train employees on freight railroads are, therefore, not as appropriate for train employees on tourist railroads. Accordingly, the technical amendment would make it clear that train employees who provide rail passenger transportation on tourist, historic, scenic, or excursion railroads may also be covered by these regulations and orders.

Subsection(d) of this section would clarify that civil penalties may be taken for violations of regulations or orders promulgated pursuant to the provision of the hours of service laws at 49 U.S.C. 21109. The civil penalty provision at 49 U.S.C. 21303(a)(1) would be amended to read: "Subject to section 21304 of this title, a person violating chapter 211 of this title, including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008), violating regulations or orders issued pursuant to chapter 211 of this title, or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance."

#### **SEC. 9506. ELIMINATION OF CERTAIN FRA REPORTING REQUIREMENTS.**

This section would remove the section 102(d)(2) of the Rail Safety Improvement Act of 2008 requirements that the Secretary provide a report to Congress annually on FRA's performance that contains the Secretary's required assessment, at least annually, of the Department's progress in reaching the six long-term rail safety strategic goals set forth in section 102(a). Section 102(d)(2) is unnecessary and duplicative in light of other existing forms and means of communication about the Department's progress in achieving its long-term rail safety strategy. The Secretary reviews this progress much more frequently than annually, and through the Department's Web site (<http://www.dot.gov>) and Congressional briefings and hearings, the Secretary and FRA report to Congress much more frequently than annually. This requirement is needlessly burdensome to the Department and the agency and tends to detract from core safety assurance and compliance activities and efforts by requiring preparation of a report instead of conducting actual safety oversight.

### **TITLE X-- MISCELLANEOUS**

#### **SEC. 10001. CONSIDERATION OF TRAVEL AND TOURISM IN AWARD OF FINANCIAL ASSISTANCE.**

This section would amend Section 305 of title 49 to direct the Secretary to encourage grant recipients to support travel and tourism within the United States, and to consider travel and tourism effects among other criteria for grant funding.

On January 19, 2012, President Obama signed Executive Order 13597 -- Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness. Subsequently, on May 10, 2012, President Obama released the National Travel and Tourism Strategy, which establishes an overarching goal of increasing American jobs by attracting and welcoming 100 million international visitors, who will spend an estimated \$250 billion, annually by the end of 2021.

As the United States endeavors to meet this goal, improvements to America's transportation infrastructure are needed to support increased demand. Such infrastructure investments will facilitate ease of movement to, from, and within the United States. In support of the Administration's goals of promoting economic growth and increasing jobs, infrastructure finance and planning activities should give priority consideration to projects that support travel and tourism.

## **SEC. 10002. ELECTRONIC REPORTS AND REPORT MODIFICATION.**

(a) **USE OF ELECTRONIC MEDIA FOR REPORTS.** This provision is nearly identical to a provision that was enacted by Congress in the FAA Modernization and Reform Act of 2012, but which applied only to reports generated by the FAA. This proposal would extend to the Department as a whole, the same approach to reports publication that FAA is already required to follow.

The proposal is also similar to a provision that appeared in the Consolidated Appropriations Act for 2014 (section 895), but appears to be limited in its application to reports generated in 2014. This proposal would expand application indefinitely to all Departmental report. This proposal would not affect the Department's obligation to generate a report required by statute and would only relieve the Department of producing a paper report. Rather than delivering paper reports to individual Congressional Committees, most reports would be posted on the Department's Web site for public access. This practice streamlines generation and coordination of reports, makes reports more accessible to the public, and ensures that reports are available more quickly. The proposal also retains an "exception" clause which would authorize the Secretary to produce a paper report if: (1) necessary to fulfill the Department's mission; (2) electronic publication of the report would result in the publication of information exempt from public disclosure under section 552(b) of title 5; or (3) electronic publication would have an adverse impact on safety or security, as determined by the Secretary.

(b) **ANNUAL REPORTING REQUIREMENT ON NTSB MOST WANTED LIST:** Each year, DOT is required to respond to NTSB's "most wanted list" by February 1. This statutory requirement is imposed regardless of when NTSB releases its list. Therefore, if NTSB's report is released in January, as it has been in the past, DOT is still required to respond to Congress by February 1. This has created an unreasonable and often unachievable statutory requirement.

This section proposes that a technical fix be inserted into the relevant provisions to reflect a 120 day period of time to allow the Department to respond to the NTSB's most wanted list.

## **SEC. 10003. AMENDMENT OF FEDERAL AID IN SPORT FISH RESTORATION ACT.**

This section would extend the authority to make expenditures from the Sport Fish Restoration and Boating Trust Fund through September 30, 2018. This period is consistent with the years for which the Act authorizes funds for surface transportation programs.



Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Trust Fund.

#### **SEC. 10004. AMENDMENTS TO CHAPTER 537 OF TITLE 46.**

The amendments proposed by this section are intended to clarify the ultimate oversight and approval authority of the Secretary of Transportation over Departmental programs, specifically in this case involving certain loan guarantees offered and administered by the Department of Transportation.

#### **SEC. 10005. GOVERNMENT-WIDE AUTHORITY FOR ELECTRIC CHARGING INFRASTRUCTURE AT NO COST TO THE TAXPAYER.**

This section would clarify the circumstances under which the Federal Government may provide electric vehicle charging services to employees. It would provide legal authority for government agencies to offer electric vehicle charging services on a reimbursable basis to employees, members of the armed services, and contractors at parking facilities under agency control. The provision would explicitly permit agencies to contract with private parties to offer vehicle charging on a commission basis. The provision would also clarify that using electric vehicle charging services would not exempt employees from parking fees (if any).

### **TITLE XI--BUDGETARY INTERPRETATIONS AND TREATMENTS**

#### **SEC. 11001. AMOUNTS IN THIS ACT.**

This section would explain the treatment of contract authority, obligation limitations, liquidating cash, mandatory budget authority, and administrative fees in this Act. This Act would implement a new budget treatment regime in which outlays would be understood to derive from contract authority (rather than obligation limitations), and would be scored as mandatory, subject to PAYGO requirements. This new budgetary treatment is required since the current regime (mandatory contract authority with discretionary outlays from discretionary obligation limitations) skirts standard budgetary controls (PAYGO and discretionary caps), and the current system has broken down, requiring over \$56 billion in General Fund transfers since 2008 to keep the Highway Trust Fund solvent.

Section 11001(a) states that all funding provided by this Act is mandatory contract authority.

Section 11001(b) states unless explicitly provided otherwise, the obligation limits in this Act shall be one-year rather than multi-year or no-year limits, and shall apply to any obligations incurred in that fiscal year, whether from new contract authority provided in that year by this Act or available unobligated balances from prior Acts. However, obligation limits shall not apply to unobligated balances of contract authority from prior Acts if that contract authority was exempt from such limitations, or was subject to

multiyear obligation limits that continue to apply to that contract authority. Obligation limitations shall also not apply to discretionary or mandatory administrative fees, or reimbursable funding undertaken by accounts established by this Act on the behalf of discretionary accounts. Section 11001(b)(3) states that annual appropriations acts may increase or decrease the obligation limitations provided in this act for the current year or budget year only, through fiscal year 2018. Most of this section is consistent with current practice.

Obligation limits are not imposed for years after 2018. If contract authority available to the Transportation Trust Fund remains unobligated after 2018 and subsequent legislation does not address that contract authority, it will automatically be available for obligation in 2019 and beyond. This treatment is intended to assure that the contract authority available to the Fund, which will have been paid fully for under the terms of this legislation, is ultimately fully usable for the intended purposes of the Fund.

Section 11001(c) authorizes to be appropriated such sums as may be necessary for the liquidation of contract authority. Consistent with current practices, annual appropriation acts will provide liquidating cash for all outlays within Transportation Trust Fund accounts. Also consistent with current practice, liquidating cash is not scored as discretionary budget authority. Note that by the nature of contract authority, which permits agencies to incur obligations but not liquidate them, liquidating cash is ultimately needed for contracts that have been obligated and fulfilled, and so must be provided at the appropriate time.

Section 11001(d) states that if the collections of fees for administrative purposes under this act are subject to annual appropriations, then they should be considered discretionary offsetting collections; if such fees are not subject to annual appropriations, they shall be considered mandatory offsetting collections. Moreover, the authority to obligate the proceeds of those fees and the outlays flowing from such obligations will be scored the same way the fees themselves are – discretionary or mandatory depending on whether they are or are not controlled by the appropriations process.

## **SEC. 11002. DIRECT OR MANDATORY SPENDING.**

This section would explain that the contract authority created by this Act and the outlays flowing from that contract authority shall be treated as direct spending, also known as mandatory spending. Previously, contract authority for the Highway Trust Fund was treated as mandatory but the outlays of that trust fund were treated as discretionary. In addition, as of October 1, 2014, outlays of contract authority authorized from the Highway Trust Fund prior to the enactment of this Act shall be treated as mandatory spending and shall be attributed to the Transportation Trust Fund. This classification of outlays as mandatory is important to align the scorekeeping of outlays with that of budget authority. It has the desirable effect of placing the Transportation Trust Fund revenue and outlays on the PAYGO scorecard, which is intended to close a major loophole in existing budget enforcement and to increase the likelihood that the Transportation Trust Fund will be solvent and be able to support its activities with its own dedicated revenues.

## **SEC. 11003. TREATMENT FOR STATUTORY PAYGO AND RELATED PURPOSES.**

This section would explain the treatment of all budget authority provided in this Act for the purposes of PAYGO.

Section 11003(a) states that contract authority (and associated outlays flowing there from) provided in this act for the Transportation Trust Fund shall be considered direct spending. Further, all outlays from contract authority previously provided from the Highway Trust Fund shall be considered direct spending. This general rule is included to explicitly state that Transportation Trust Fund spending is consistent with the statutory PAYGO definition of direct spending. Finally, with a limited number of exceptions, any legislation reauthorizing or amending this act will be treated as direct spending for PAYGO purposes. To some extent, this subsection elaborates on the general classifications specified in section 11002.

Section 11003(b) provides the transitional rule under which Transportation Trust Fund baseline and policy outlays should be estimated for PAYGO purposes. The Administration is proposing to move a number of discretionary accounts currently funded via the General Fund into the Transportation Trust Fund and to make them mandatory henceforth. These accounts are listed in section 11003(b)(2), and include intercity passenger rail and transit activities.

To calculate baseline levels for the expanded trust fund, Section 11003(b)(1)(B) states that the annualized level of budget authority (for discretionary accounts being merged into the trust fund) and obligation limitations (for current Highway Trust Fund accounts) provided for fiscal year 2014, shall be used as the base from which spending increase are measured for purposes of PAYGO, and then inflated in the out-years consistent with the baseline definitions in the Balanced Budget and Emergency Deficit Control Act of 1985.

The Administration believes this baseline is appropriate for calculating policy outlay increases under PAYGO, as budget authority and obligation limitations that track inflation and so are constant in real terms represent the true programmatic size of surface transportation programs under current law; they are a better representation of current policy than contract authority, which does not inflate in the baseline under current treatment. Baseline outlay estimates partially offset the total mandatory outlays created by this Act in the Transportation Trust Fund. That is to say, it is the incremental increase in outlays above the baseline that must be paid for under Statutory PAYGO.

Section 11003(b)(3) states that any increase in revenue in excess of the increase in mandatory outlays created by this act shall not be scored as reducing the deficit under the Statutory Pay-As-You-Go Act of 2010. This language is required to ensure trust fund solvency, as increased revenue (relative to current law) is required not only to cover the outlay increase, but to cover the existing baseline outlays as well to the extent that those baseline outlay are not covered by the existing dedicatee revenues of the highway trust fund. Section 11003(b)(3) refers to net revenues to reflect the possibility or likelihood

that the new revenues chosen on a bipartisan basis by Congress to ensure the solvency of the Transportation Trust Fund will have associated effects that make net revenues lower than gross revenues. It is the net revenues that count for purposes of statutory PAYGO.

#### **SEC. 11004. SCORING OF CHANGES IN CONTRACT AUTHORITY IN APPROPRIATIONS ACTS.**

This section states that if an annual appropriation act increases or decreases the amount of contract authority provided by this Act, such a change shall be scored as discretionary if the change occurs in the current year or budget year, or as mandatory if the change occurs in the outyears. Similarly, if such a change affects estimated outlays, such outlay changes shall be scored as discretionary or mandatory based on the scoring of the BA that produces those outlays. This scoring treatment is consistent with current budgetary scoring rules.

The existence of obligation limits may mean that reductions in contract authority do not produce any outlay reductions until a subsequent year. However, since the premise of this Act is that all the contract authority provided by the Act will ultimately be available for obligation in some year, any reduction in contract authority will ultimately produce real reductions in spending, which justifies scoring the reduction.

#### **SEC. 11005. SCORING OF CHANGES IN OBLIGATION LIMITS IN APPROPRIATIONS ACTS.**

This section is a placeholder for a determination for how to score changes in obligation limitations set by this act in discretionary appropriation acts. The Administration would like to work with the Congress on developing a scoring regime that matches the goals of the revised budgetary treatment for surface transportation programs.

#### **SEC. 11006. SCORING OF TRANSFERS BETWEEN THE GENERAL FUND AND THE TRANSPORTATION TRUST FUND.**

This section is a placeholder for a determination for how to score transfers from the General Fund to the Transportation Trust Fund. The Administration would like to work with the Congress on developing a scoring regime that matches the goals of the revised budgetary treatment for surface transportation programs.

#### **SEC. 11007. SPECIAL RULE.**

This section provides (in subsection (a)) that, on September 30, 2018, the Secretary of Transportation shall permanently cancel, and return such amounts to the Treasury, the contract authority described in subsection (b).

Subsection (b) provides that the contract authority referenced in subsection (a) are those amounts apportioned under the Federal Aid Highway program that are available to each

State for fiscal years 2015 through 2018, that are in excess of contract authority provided for fiscal years 2015 through 2018 by section 2001 of this Act.

Subsection (c) provides that, when implementing subsection (a), the cancellation shall be taken from unobligated balances that remain from contract authority enacted before the enactment of this Act.

Subsection (d) provides that his section shall not apply to contract authority provided by this Act or prior acts that is exempt from obligation limitations.